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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 63

HERMAN A. BEILAN, PETITIONER,

vs.

BOARD OF PUBLIC EDUCATION, SCHOOL DISTRICT OF PHILADELPHIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA, EASTERN DISTRICT.

PETITION FOR CERTIORARI FILED DECEMBER 31, 1956
CERTIORARI GRANTED MAY 20, 1957

No. 97. **January Term, 1956.**

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT.

BOARD OF PUBLIC EDUCATION
SCHOOL DISTRICT OF PHILADELPHIA,
Appellant,

v.

HERMAN A. BEILAN.

Appeal from the Judgment of the Court of Common Pleas No. 6 of the County of Philadelphia, December Term 1954, No. 4742.

RECORD.

SIDNEY L. WICKENHAVER,
C. BREWSTER RHOADS,
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EDWARD B. SOKEN,
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Philadelphia 3, Pa.,
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RELEVANT DOCKET ENTRIES.

January 17, 1955. Appeal from the Superintendent of Public Instruction of Commonwealth of Pennsylvania filed.

January 17, 1955. Appellant's exceptions to Adjudication of the Superintendent of Public Instruction filed.

January 17, 1955. Writ of Certiorari Exit. Ret. Sec. Leg.

March 14, 1955. Recorded return to office filed.

October 20, 1955. The appeal of Herman A. Beilan is hereby sustained; the action of the Superintendent of Public Instruction in affirming the Board of Education's dismissal of the said Herman A. Beilan is reversed; and the discharge of said Herman A. Beilan is set aside.

Eo die. Opinion filed: (Curtis Bok) P. J. (Gerald F. Flood) J. (Louis E. Levinthal) J.

October 27, 1955. Certiorari from Supreme Court as of January Term, 1956 #97 brought into office and filed. Board of Education School District of Philadelphia, appellant.

RESOLUTION OF THE BOARD OF PUBLIC EDUCATION.

WHEREAS, written charges under the Act of March 10, 1949, P. L. 30, Section 1122, as amended, have been made by the Superintendent of Schools, Dr. Louis P. Hoyer, against Herman Beilan, a professional employe, of incompetency and persistent and wilful violation of the school laws of this Commonwealth, a copy of which charges is as follows:

On June 25, 1952, Dr. Louis P. Hoyer, Superintendent of Schools, informed you during a personal interview that he wished to ask you some questions having an important bearing on your loyalty. Dr. Hoyer then asked you whether in 1944 you were press director of the professional section of the Communist Political Association. You said you wanted advice of counsel and would call Dr. Hoyer to arrange for a further appointment.

On October 14, 1952, at the second interview, you said you had obtained advice of counsel who said you could not legally be asked questions about political and religious beliefs and that there was no legal basis for asking these questions.

You refused to answer questions as to your affiliations when asked by the Sub-Committee of the House Committee on Un-American Activities, on Wednesday, November 18, 1953, and you invoked the Fifth Amendment of the Federal constitution as the basis of your refusal.

In refusing to answer the questions of Dr. Louis P. Hoyer, you failed in your duty to cooperate with the Superintendent of Schools in the performance of his official duties as your administrative superior. The Superintendent of Schools was trying to discuss with you matters directly affecting your professional fitness

to be a teacher in the Philadelphia public schools. If the information in Dr. Hoyer's possession was true it created a serious doubt as to whether you could continue the duties of a public school teacher. The purpose of the interview was to help the Superintendent resolve this doubt. No professional employe has the legal right to impede the Superintendent of Schools in the performance of his duties. It is inconsistent with your civic responsibility to refuse to answer questions relating to your loyalty when the purpose of the questions was to determine your fitness to continue to be a public school teacher.

You failed in your duty to cooperate with a properly constituted Sub-Committee of the House of Representatives of the United States of America. Instead of performing your duty toward this Sub-Committee as every citizen should have done in similar circumstances you invoked the Fifth Amendment as the basis of your refusal to cooperate.

Your conduct shows you are incompetent and are guilty of wilful and persistent violation of the school laws, and

WHEREAS, the said Superintendent of Schools has recommended the dismissal of the said professional employe, therefore be it

RESOLVED, That the Board of Public Education hereby prefers charges against the said Herman Beilan of incompetency and persistent and wilful violation of the school laws of this Commonwealth in violation of the Act of March 10, 1949, P. L. 30, based on the written charges of the Superintendent of Schools, and

FURTHER RESOLVED, That a written notice signed by the President and attested by the Secretary of The Board of Public Education be forwarded by registered mail to aforesaid professional employe setting forth a

detailed statement of the charges and the information that a full hearing on the charges will take place not less than 10 days nor more than 15 days after such notice, at which hearing the employe will be given an opportunity to be heard either in person or by counsel, or both.

Mr. Obermayer moved the adoption of the resolutions.

On the adoption of the resolutions, the yeas and nays were called and were as follows:

YEAS: Mr. Downs, Mr. FitzPatrick, Miss Golden, Mr. Greenberg, Mr. LaBrum, Mrs. Lewis, Mr. Loesche, Dr. Lucchesi, Mr. McDonough, Mr. Obermayer, Dr. Pollock, Mr. Swenson, Dr. Turner, Mr. Weinrott, Mr. Saul, *President*—15.

NAYS: None.

The resolutions were adopted.

HEARING BEFORE BOARD OF EDUCATION.

Philadelphia, Pa., December 22, 1953.

Hearing in the above matter held this date before the Board of Public Education pursuant to the Act of March 10, 1949, P. L. 30, Section 1122, as amended, in the Board Room of the Administration Building of the Board of Public Education, 21st and Parkway, Philadelphia, Pennsylvania.

Present:

WALTER BIDDLE SAUL, Pres.	WILLIAM H. LOESCHE
W. FINDLAY DOWNS	JOSEPH A. McDONOUGH
A. L. FITZPATRICK	LEON J. OBERMAYER
GERTRUDE A. GOLDEN	ROBERT BLAIR POLLOCK
JOSEPH J. GREENBERG	ALVIN A. SWENSON
J. HARRY LABRUM	JOHN P. TURNER
MRS. JOHN F. LEWIS, JR.	LEO WEINROTT

ADD B. ANDERSON, Secretary and Business Manager

C. BREWSTER RHOADS and

EDWARD B. SOKEN, Counsel for the Board

JOHN ROGERS CARROLL, Counsel for Herman Aaron Beilan

HERMAN AARON BEILAN, A Professional Employee

MR. SAUL: The meeting will come to order. The Secretary will read the call for the meeting.

MR. ANDERSON: Communication signed by the President, addressed to the Secretary.

Dear Mr. Anderson: Will you call a special meeting of the Board of Public Education for Tuesday, December 22, 1953 at 1:30 P. M. to hear

the charges against Bernard August and Herman Beilan? Sincerely yours, signed by the President.

MR. SAUL: The Secretary will call the roll.

(The Secretary called the roll and those members previously listed as being present responded to their names.)

MR. SAUL: We will proceed with the hearing. The Secretary will read the resolution under which the hearing is to be held.

MR. ANDERSON: Whereas, written charges under the Act of March 10, 1949, P. L. 30, Section 1122, as amended, have been made by the Superintendent of Schools, Dr. Louis P. Hoyer, against Herman Beilan, a professional employee, of incompetency and persistent and wilful violation of the school laws of this Commonwealth, a copy of which charges is as follows:

On June 25, 1952, Dr. Louis P. Hoyer, Superintendent of Schools, informed you during a personal interview that he wished to ask you some questions having an important bearing on your loyalty. Dr. Hoyer then asked you whether in 1944 you were press director of the professional section of the Communist Political Association. You said you wanted advice of counsel and would call Dr. Hoyer to arrange for a further appointment.

On October 14, 1952, at the second interview, you said you had obtained advice of counsel who said you would not legally be asked questions about political and religious beliefs and that there was no legal basis for asking these questions.

You refused to answer questions as to your affiliations when asked by the Sub-Committee of

the House Committee on Un-American Activities, on Wednesday, November 18, 1953, and you invoked the Fifth Amendment of the Federal Constitution as the basis of your refusal.

In refusing to answer the questions of Dr. Louis P. Hoyer, you failed in your duty to cooperate with the Superintendent of Schools in the performance of his official duties as your administrative superior. The Superintendent of Schools was trying to discuss with you matters directly affecting your professional fitness to be a teacher in the Philadelphia public schools. If the information in Dr. Hoyer's possession was true it created a serious doubt as to whether you could continue the duties of a public school teacher. The purpose of the interview was to help the Superintendent resolve this doubt. No professional employee has the legal right to impede the Superintendent of Schools in the performance of his duties. It is inconsistent with your civic responsibility to refuse to answer questions relating to your loyalty when the purpose of the questions was to determine your fitness to continue to be a public school teacher.

You failed in your duty to cooperate with a properly constituted Sub-Committee of the House of Representatives of the United States of America. Instead of performing your duty toward this Sub-Committee as every citizen should have done in similar circumstances you invoked the Fifth Amendment as the basis of your refusal to cooperate.

Your conduct shows you are incompetent and are guilty of wilful and persistent violation of the school laws, and

Whereas, the said Superintendent of Schools has recommended the dismissal of the said Professional employee, therefore be it

Resolved, that The Board of Public Education hereby prefers charges against the said Herman Beilan of incompetency and persistent and wilful violation of the school laws of this Commonwealth in violation of the Act of March 10, 1949, P. L. 30, based on the written charges of the Superintendent of Schools, and

Further Resolved, that a written notice signed by the President and attested by the Secretary of The Board of Public Education be forward by registered mail to aforesaid professional employee setting forth a detailed statement of the charges and the information that a full hearing on the charges will take place not less than 10 days nor more than 15 days after such notice, at which hearing the employee will be given an opportunity to be heard either in person or by counsel, or both.

MR. SAUL: Before we start with the testimony I would like Mr. Rhoads, if he will, to call attention to the sections of the Code referred to. I understand that Section 1122 of the Code, providing for causes for termination of contract, is the basis for the charge of incompetency. Is that correct, Mr. Rhoads?

MR. RHOADS: That is correct, Mr. President.

MR. SAUL: The other charge is wilful and persistent violation of the School Laws of the Commonwealth. Will you point out to the Board, please, which sections of the School Code or the laws that you believe have been violated?

MR. RHOADS: Mr. President, I think I have made myself clear on prior occasions. I do not, in consider-

ing the charge of wilful and persistent violation of the school laws of this Commonwealth, refer to any specific section of the School Code.

It is the thought of your counsel that the chief charge here revolves around Section 1122, as I have suggested. And the question for ultimate interpretation of the court, it seems to me, is whether the conduct of these respondents or this respondent constitutes incompetency within the specific Section 1122, and whether the other conduct or the sum total of the conduct which will be demonstrated constitutes a generalized violation of the School Code under the wilful and persistent violation terms.

MR. SAUL: But there is no section of the law to which you can point to say that is the section that has been violated?

MR. RHOADS: Under the wilful and persistent violation of the School Code provision, yes, sir, there is none.

My thinking, Mr. President, is that the wilful and persistent violation of the School Code is something that depends upon the interpretation by the court of the facts of a given case. I think when the facts of this case are considered by this Board or by the courts, it will be developed and will be found to be the law, that there has resulted from those acts a wilful and persistent violation.

MR. SAUL: There is one other thing that I would like to have clear.

MR. RHOADS: I think that that is the only way I can answer you, Mr. President.

MR. SAUL: Well, that is perfectly clear. The School Code beginning with Section 3307——

MR. WEINROTT: Well, may we take a look at 3307 while we are talking about it? I would like to know what we are talking about.

MR. OBERMAYER: Mr. Saul is talking about the Pechan——

MR. DOWNS: Mr. President, aren't we here to hear the testimony of this witness and not discuss any matters you are bringing up?

MR. SAUL: That is correct. But I think it would be helpful to the Board to have in mind the sections of the School Code under which the hearing is proceeding, and to eliminate such provisions that, as I understand, counsel say are not involved. But I think it should clearly appear on the record they are not involved.

MR. RHOADS: Mr. President, I am not prepared to argue the legal phases of that particular issue at this minute, and I don't propose that this record shall show that that is the fact unless you, Mr. President, insist on it, which I don't believe you will. It seems to me, sir, that that is an issue that is clearly within the realm of what I would call discussion between counsel and this Board in what I might term executive session.

MR. DOWNS: Exactly.

MR. RHOADS: And I have endeavored to explain, in what I might call broad brush strokes, what the thoughts of your counsel, and I believe the Board, have been in prefering these charges. But I do not think that this is an appropriate time in which, shall we say, the legal features of this particular situation shall be pinpointed by virtue of a colloquy between the Board and counsel, if I may use that expression.

MR. SAUL: Speaking both as a member of the Board and as a lawyer, from whatever decision this

Board makes there is an appeal first to the State Superintendent of Public Instruction and from his decision to the courts.

MR. RHOADS: That is my understanding, sir.

MR. SAUL: And the record that we make here will go to the court. I think that it is entirely proper that this record should show whether or not this Board, in making its decision, has considered the provisions of the Code beginning with Section 3307, which are the provisions having to do with questions that arise as to the loyalty of a teacher. I think it is only fair for that matter to be clear when the appeal is made to the court, if one is made.

MR. WEINROTT: Mr. President——

MR. RHOADS: May I answer and then be done? It is my contention, and it has been the thought of your counsel since these proceedings were initiated, that these are not proceedings brought against these respondents charging them with disloyalty. If that were the situation we would have a completely different record, a completely different set of facts, a completely different section under which the charges would be made, if made at all.

The charge which I understood the Board is making in these cases, and which I purpose to present, is a charge based upon two things and two things only, namely, that in June or in the year of 1952 the Superintendent of Schools of your School Board called upon this respondent to answer certain questions which he believed pertinent. They happen to be questions regarding his loyalty. But whether they were questions of any other character, the same situation would have developed if they had been pertinent questions. Those questions were not answered for the reasons with which you are familiar in the charges.

I then purpose to show, and there is a limitation to these charges, that on November 18, 1953 or thereabouts, this respondent, pursuant to a subpoena from the Un-American Activities Committee, appeared here in Philadelphia, was given an opportunity to testify as to certain things which that Committee, a committee of Congress, believed to be pertinent; that he refused, and that he refused not only bluntly, but he claimed the benefit of the Fifth Amendment of the Constitution of the United States. And it is our contention in connection with that second clause or charge of these charges, or count of these charges, that that fact and the prior fact of his refusal to cooperate in a matter of professional concern with the Superintendent of Schools of this School Board or this School District, constitutes incompetency.

Now, so far as I am concerned, sir, and so far as my presentation of testimony is concerned, I don't think whether this man is loyal or disloyal has anything to do with this case. And if your counsel's advice were being asked in the matter, I should say that any testimony directed toward present loyalty or disloyalty is completely out of this case.

MR. SAUL: Present or past loyalty, I take it.

MR. RHOADS: So far as this case is concerned, we are not delving into present or past loyalty.

MR. SAUL: You are not asking this Board in the presentation of these charges—you are not asking this Board to pass on the question of the loyalty of this teacher?

MR. RHOADS: I am not asking this Board in this proceeding or any other proceeding that I know of to pass upon the loyalty or disloyalty of this particular teacher. I am saying that the things which this teacher

did in connection with his professional obligations were such as to result in incompetency sufficient to discharge the teacher under the School Code.

MR. SAUL: And are you saying to the Board now that in making our decision we are not to be influenced by any thoughts or any ideas that we have as to loyalty or disloyalty?

MR. RHOADS: I can't say what thoughts are going to influence you, Mr. President, or anybody. I am saying that these charges are not directed toward loyalty, and beyond that I couldn't go. I couldn't possibly answer your question.

MR. WEINROTT: I wonder whether Mr. Rhoads is on trial here or something?

MR. OBERMAYER: Mr. Rhoads, when you use the word loyalty, you are, of course, talking about loyalty to the United States Government, not loyalty to the School System?

MR. RHOADS: By all means.

MR. OBERMAYER: I just wanted to get that clear.

MR. RHOADS: I am so glad you corrected me, because, of course, if Mr. Saul has used the word loyalty in connection with the generic use of that word——

MR. SAUL: No, I did not.

MR. RHOADS: I didn't think you did.

MR. SAUL: I think the situation is clear. We will proceed with the taking of the testimony.

MR. WEINROTT: Well, Mr. Saul, may I point out, because I am getting a little bit disturbed and I want to be undisturbed, these charges were voted by all fifteen members of the Board of Public Education, and you participated in that, too.

MR. SAUL: That is correct.

MR. WEINROTT: And I understand the charges as they are outlined here, presented to us today by a unanimous vote of all of us, are the only charges that are being tried here in accordance with what Mr. Rhoads has already indicated. That is as I understand it.

MR. SAUL: I think your understanding is correct.

MR. RHOADS: May I call, if the Board pleases, Dr. Hoyer as our first witness, and ask that he be sworn?

DR. LOUIS P. HOYER, having been duly sworn by the President of the Board, was examined and testified as follows:

By MR. RHOADS:

Q. Dr. Hoyer, would you be good enough to give your full name and address?

A. Louis P. Hoyer, 6630 North 10th Street, Philadelphia.

Q. And what is your occupation?

A. I am Superintendent of Public Schools in Philadelphia.

Q. How long have you been Superintendent of Schools?

A. I have been Superintendent of Schools since September 1, 1948.

Q. How long have you been associated with the School System of Philadelphia?

A. I have been associated with the School System of Philadelphia for forty-six years. I am in my forty-seventh year at the present time.

Q. And will you just give us the benefit of a statement of your experience and the positions which you have held in the School System?

A. Well, I have been an elementary school teacher. I have been an elementary school principal. I have been a principal of a continuation school, of two junior high schools. I have been a District Superintendent. I have been an Associate Superintendent. And now I am Superintendent of Schools.

Q. During those years have you participated in the work of the School System both as a teacher and as an administrator?

A. Yes. I have been both a teacher and an administrator.

Q. In connection with your work as Superintendent of Schools is it part of your duties to confer with professional employees of the School System on matters of a professional nature?

A. It is my duty to confer with members of the staff at all levels—teachers, administrators, supervisors. And I do that.

Q. And is it also part of your duties as Superintendent of Schools to consider from time to time the professional fitness and competency of teachers under your general supervision?

A. Yes. It is a duty that devolves upon me not only to determine the qualifications for admission to the School System, but also for retention of positions in the School System.

Q. Dr. Hoyer, do you know Herman Aaron Beilan?

A. Yes, I know him.

Q. How long have you known him?

A. I have known him only since the time he was called into my office for a conference.

Q. Do your records indicate what position he holds presently in the School System?

A. Yes. He is a teacher of English at the Gratz High School at the present time.

Q. How long has Mr. Beilan been in the School System?

A. Well, I would have to consult records to determine that, if that is in order.

Q. You don't happen to have that with you, do you?

A. Yes, I happen to have it with me.

Q. Would you be good enough to tell us?

A. He was appointed to a position as an industrial arts teacher in the Crispin School the 17th of February, 1930.

Q. And has he been continuously in the School System since that time?

A. I would say so. I would have to consult this form to see whether he was in the service or not. But he has been an employee of the System with some possible——

Q. With the exception of any service which he might have had or leaves of absence, he has been continuously in the School System?

A. That is correct.

By Mr. Weinrott:

Q. What was that date?

A. February 17, 1930.

By Mr. Rhoads:

Q. Now, Dr. Hoyer, in the performance of your duties as Superintendent of Schools of the School District of Philadelphia did you request Mr. Beilan to call upon you on June 25, 1952 for an interview in your office?

A. Yes, I did.

Q. What were the circumstances under which you called upon him? Tell us how you notified him, etc.

A. I called him to my office in a letter addressed directly to him.

Q. Have you a copy of that letter with you?

A. I have a copy of that letter.

Q. May I have a copy of that letter?

A. Yes.

MR. RHOADS: Mr. Carroll, have you the original of the letter?

MR. CARROLL: I have it, sir.

By MR. RHOADS:

Q. Dr. Hoyer, I show you the original of a letter dated June 19, 1952, purporting to be signed by Louis P. Hoyer, and addressed to Mr. Herman A. Beilan, and ask you whether that is the letter of notification for the interview.

A. That is the letter.

MR. RHOADS: I ask that the letter which has been produced by Mr. Carroll, counsel for the respondent, be marked as Board's Exhibit No. 1 in this case.

(Letter dated June 19, 1952, was marked for identification as Board's Exhibit No. 1.)

By MR. RHOADS:

Q. As a result of the letter of June 19, 1952, which you sent to Mr. Beilan, did he appear in your office on June 25, 1952?

A. Yes, Mr. Beilan did appear in my office.

Q. Will you tell the Board what your purpose was in calling Mr. Beilan to appear before you for this conference?

A. I had in my possession certain information dealing with Mr. Beilan and about which I wished to

have confirmation or a denial on his part. The material I deemed as so important with regard to possible future usefulness of Mr. Beilan in the School System that I wanted to know whether or not my information was correct. It was important information bearing on his fitness. And it was also important because it came to me from what I considered unimpeachable sources. I wanted to question Mr. Beilan concerning this information.

Q. In general what was the nature of the information? I don't mean anything specific, but to what did it pertain? I refer particularly to your expression fitness.

A. This pertained to Mr. Beilan's association with or membership in various organizations that had been considered subversive organizations. They also indicated a connection with Communist activities.

Q. And did you consider that any possible connection with subversive organizations or Communist activities was such as in your opinion to disqualify a teacher if they be proven true?

A. I considered them to be totally disqualifying to a teacher if they were proven to be true.

Q. And was it for the purpose of securing information from the man concerning whom you had had that information that you called him into your office?

A. I felt that I was giving him an opportunity to assist me in coming to a conclusion with regard to this information that I had. And I asked him to come for that reason.

Q. Is it, therefore, fair to assume that the purpose of your interview was to give Mr. Beilan an opportunity to either deny or agree to certain information which you were going to talk to him about?

A. That is correct.

Q. Was this interview which you had asked Mr. Beilan to attend an interview or a conference which you would consider as of a professional nature?

A. I felt that it was entirely professional because it dealt with what I believed to be qualifications for the position of teacher.

Q. And did you make that purpose clear to Mr. Beilan at the beginning of the conference?

A. I felt that I made it very clear and very evident at the beginning of the conference that this was entirely a professional conference.

Q. Now could you tell us as directly and as accurately as you can what you said to Mr. Beilan and what Mr. Beilan said to you?

A. I indicated to Mr. Beilan that I had some information that I felt bore on the question of his loyalty, and I wanted to know whether the information was correct.

Mr. Beilan wanted me to ask the questions. And I indicated to him that I would be glad to ask him one of the questions and he could then determine whether or not he would answer it and whether he would answer other questions.

Q. And did you ask him a specific question?

A. I asked him one question.

Q. What was that?

A. That question was whether in 1944 he was press director of the professional section of the Communist Political Association.

Q. What reply did he give you to that question?

A. Mr. Beilan did not answer the question. He said he would wish to consult counsel. And I, of course, indicated to him that that was entirely satisfactory to me. So the matter rested there, except that Mr. Beilan wanted to hear the other questions that I

might have asked, but I did not ask any further questions since the first question was not answered.

Q. And was there any indication at the conclusion of your conference that you would be glad to hear from Mr. Beilan again if he so chose to confer with you?

A. Well, I indicated to him that I would want him to come in again when he had had opportunity to consult counsel. And I did ask him to come in for a second conference.

Q. Now, when was that second conference?

A. That second conference was in October. October 14, 1952.

Q. How did that conference happen to occur?

A. That conference happened to occur because I asked Mr. Beilan to come into my office for a further discussion of matters that we had originally discussed.

Q. Was that interview obtained as a result of a letter to Mr. Beilan or a telephone call?

A. No. This was a letter. I have a copy of that letter.

MR. RHOADS: May we have the original, Mr. Carroll, if you don't mind?

MR. CARROLL: I assume that we will be able to get the originals back and you will substitute copies in the record.

MR. RHOADS: Certainly. Mr. Carroll has produced and I now offer in evidence as Board's Exhibit No. 2 in this case a letter of Dr. Louis P. Hoyer to Mr. Herman A. Beilan, dated October 9, 1952.

(Letter dated October 9, 1952, was marked for identification as Board's Exhibit No. 2.)

By MR. RHOADS:

Q. I now ask Dr. Hoyer whether he will identify that as his letter.

A. That is my letter.

Q. And that is the letter, Dr. Hoyer, pursuant to which Mr. Beilan came to your office on October 14, 1952?

A. That is correct.

MR. SAUL: Will you read the letter to the Board?

MR. RHOADS: Yes, sir. I am sorry, Mr. Saul. Dear Mr. Beilan: In order that I may discuss with you further matters already brought to your attention, I should like you to report to this office on Tuesday morning, October 14th, at 10:30 o'clock. Sincerely yours, Louis P. Hoyer, Superintendent of Schools.

Since I did not read the other one, Mr. Saul, may I do so now? This is the June 19 letter.

Dear Mr. Beilan: I should like to see you on a matter of importance at 10:30 o'clock on Wednesday, June 25, in Room 219 of the Administration Building. Sincerely yours, Louis P. Hoyer, Superintendent of Schools.

I am sorry that I did not read them.

By MR. RHOADS:

Q. Mr. Beilan, I believe, reported to you pursuant to your request?

A. He did.

Q. On October 14, 1952; is that right?

A. That is correct.

Q. Will you just tell the Board exactly what occurred? Relate the conversation as specifically as you can, both your questions and Mr. Beilan's answers.

A. Mr. Beilan indicated that he had consulted counsel and he had been advised that he could not legally answer the question that I had asked or questions similar to it.

I indicated to Mr. Beilan on that occasion that this was a very serious and a very important matter and that failure to answer the questions might lead to his dismissal. I wanted to make that clear to Mr. Beilan so that there would be no doubt in his mind as to the importance of this matter as I conceived it; that it wasn't a question of idle curiosity on my part, but that it was a real question of fitness for him to be a teacher or to continue in the teaching work.

I think that is the gist of what happened on that occasion.

Q. May I ask you whether Mr. Beilan answered any of the questions, either the first one or any other questions?

A. There were no questions asked at this conference because of Mr. Beilan's statement that he had consulted counsel and was advised that he could not answer questions of this type.

Q. And you referred particularly to the first question which you had asked him in your earlier interview; is that correct?

A. That is true.

Q. And did you in your interview of October 14, 1952, again ask him the initial question, whether in 1944 he was press director of the professional section of the Communist Political Association?

A. I felt there was no point to asking that question since he had indicated to me that he could not answer questions of that type.

Q. Would you say that Mr. Beilan was cooperative in his attitude in connection with this interview and the prior interview?

A. Well, inasmuch as I was not able to get any assistance from Mr. Beilan in shaping my conclusions with regard to the material I had, I would say that he was totally uncooperative.

Q. Why did you consider it of importance to your duties as Superintendent of Schools to ask questions of the type which you indicated you intended to ask him?

A. I considered it important because it seemed to me that any person identified as the claim was or the information indicated Mr. Beilan was identified, could not be a satisfactory teacher in the School System. And I wanted to know definitely whether or not the facts or the statements that I had were correct. Also the information had come to me from sources that it was utterly impossible for me to ignore. They came from extremely reliable sources. And that lent to the information an aura of probability. I wanted to be sure that that was true.

Q. Now, Dr. Hoyer, do you recall that Mr. Beilan, the respondent in this case, was called before the House Committee on Un-American Activities on November 18, 1953 to testify here in Philadelphia?

A. Yes, I recall that.

Q. Are you familiar with the testimony which he gave before that Committee?

A. I have read the testimony.

Q. I show you, Dr. Hoyer, what purports to be a transcript of the testimony of witnesses appearing before the House Committee on Un-American Activities on November 18, 1953, and refer you particularly to pages 302 to 314 inclusive, and ask you whether or not the transcript which I show you is a transcript of the record which you said you read as you testified a moment ago.

A. Yes, this is the testimony that I read.

MR. RHOADS: Mr. Carroll, I show you a transcript of the testimony and ask you whether there is any question on your part as to whether this is the testimony.

If the Board pleases, may the record show that Mr. Carroll has been good enough to advise me that the transcript which I hold in my hand and from which I will read is a true transcript of the record of Mr. Beilan's testimony before the Committee on November 18, 1953?

MR. SAUL: The record may so show.

MR. RHOADS: And with that kind stipulation I will now offer in evidence and ask that it be marked Board's Exhibit No. 3, the transcript of Mr. Beilan's testimony from page 302 to page 314 inclusive, and I will ask the stenographer to mark it.

(Pages 302 to 314 inclusive of the transcript of testimony were marked for identification as Board's Exhibit No. 3.)

MR. RHOADS: If the Board pleases, I now offer in evidence and will read to the Board the testimony of Herman Beilan before the House Committee on Un-American Activities on November 18, 1953, which is as follows, reading from page 302:—it will be stipulated, Mr. Carroll, that the Herman Beilan referred to here is your client, Herman Aaron Beilan; is that correct?

MR. CARROLL: Correct.

MR. RHOADS: Testimony of Herman Beilan, accompanied by his counsel, W. J. Woolston.

Mr. Kunzig: Would you give your full name, please?

Mr. Beilan: Herman Aaron Beilan.

Mr. Kunzig: Your address, please, sir?

Mr. Beilan: 7641 Thouron Avenue.

Mr. Kunzig: Would counsel please state his name and address for the record?

Mr. Woolston: W. J. Woolston, 1529 Walnut Street, Philadelphia, Pennsylvania.

Mr. Kunzig: Would you give the committee, please, Mr. Beilan, a brief resume of your educational and employment background?

Mr. Beilan: Yes, sir. I graduated from Central High School in the year 1928. I went to the Philadelphia Normal School and graduated in February, 1930.

I was appointed as a teacher two weeks later. I continued my education at Teachers College, from which school I graduated in 1934 with honors.

Since that time I have taken many in-service courses offered by the Board of Education.

My professional record is as follows: I was appointed on February 17, 1930, to the Industrial Arts Class of the Crispin Elementary School. I taught there until September 1, 1933, when I was appointed to the Ferguson School.

In 1940 the Board of Education abandoned the industrial arts program and I was reappointed to the grades in the same school. That was in February, 1940.

In September, 1942, I was transferred to the Blaine School, and in September, 1944, I was appointed to the Barratt Junior High School in the field of general education.

In February, 1947, I was appointed to the senior high school in the field of English and for one-half year, as was the custom at that time, I served as an auxiliary teacher in District 6.

In September of that year I was appointed to Gratz High School, where I am now teaching.

Mr. Kunzig: What do you teach there, Mr. Beilan?

Mr. Beilan: I asked to have the cameras turned off. I respectfully ask again, according to your own rules, that they be turned off.

Mr. Velde: The rule refers to telecast.

Mr. Beilan: One of the cameras has "TV" marked on it.

Mr. Velde: I understand from the technician that it is not running.

Mr. Kunzig: Have you been a director of Sunnyland Day Camp located on Route 309, Montgomery County, near here, a camp for children?

Mr. Beilan: Yes, I have.

Mr. Kunzig: When was that, what year?

Mr. Beilan: 1952 and 1953.

Mr. Kunzig: Mr. Beilan, have you ever been a member of the Communist Party?

Mr. Beilan: I have several reasons for not answering that question. I believe I have the right under the Constitution of the United States not to answer that question, under the Fifth Amendment.

Mr. Kunzig: You refuse to answer under the Fifth Amendment?

Mr. Beilan: That is well stated.

Mr. Kunzig: This Committee is in possession of sworn testimony that you have been a member of the Communist Party and that also in 1943 and 1944 you were a member of the Daily Worker Press Club. Is that correct?

MR. BEILAN: I object to this question because this is cross-examination.

According to your own rules, and I would like to give the number of the rule, Rule 11 in this book that was handed to me, entitled "Rules of Procedure"——

Mr. Kunzig: Would you answer the question, please, Mr. Beilan? Have you been a member during 1943 and 1944 of the Daily Worker Press Club?

Mr. Beilan: I would like a ruling from the Chairman.

Mr. Velde: The committee does not make any rules. Will you proceed to give the information which is being requested of you by counsel?

Mr. Beilan: These rules were handed to me.

Mr. Velde: We are familiar with the rules of this committee. Will you please proceed so that we might have other witnesses before we have to adjourn? Maybe somebody will give us a little information pretty soon.

Mr. Beilan: I want to register an objection. Now, will you please repeat the question?

Mr. Kunzig: Mr. Reporter, would you read back the question to the witness?

(Whereupon, the following question was read:

"This committee is in possession of sworn testimony that you have been a member of the Communist Party and that also in 1943 and 1944 you were a member of the Daily Worker Press Club. Is that correct?")

Mr. Beilan: I invoke the privileges of the Fifth Amendment.

Mr. Kunzig: In 1944 were you press director of the Professional Section of Section 8 of the Communist Political Association, as has been testified to under oath before this committee?

Mr. Beilan: Same answer, same reason.

Mr. Kunzig: Now, in 1945 were you secretary of Section 8 of the Communist Political Association, as has been testified to before this Committee under oath?

Mr. Beilan: Same answer, same reason.

Mr. Kunzig: We also have, under oath, testimony that in 1944——

Mr. Beilan: Excuse me while I consult with my counsel.

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Kunzig: Have you concluded your conference?

Mr. Beilan: Yes. Now, would you repeat the question, please?

Mr. Kunzig: Will the reporter read the question?

(Whereupon, the following question was read:

"Now, in 1945 were you secretary of Section 8 of the Communist Political Association, as has been testified to under oath before this committee?")

Mr. Beilan: Same answer, same reason.

Mr. Kunzig: The committee is in possession of sworn testimony that in 1944, as a member of the Communist Party, you held membership book Number 78343. Is that correct?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: Same answer, same reason.

Mr. Kunzig: And in 1945 we have sworn testimony that you held membership book in the Communist Party Number 87591.

Mr. Beilan: I invoke my privilege under the Fifth Amendment.

Mr. Kunzig: We have testimony that in 1946 and in 1947 you were an organizer of the professional section of the Communist Party of Eastern Pennsylvania and Delaware. Is that correct?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: May I ask if you have this information why is it relevant that you ask me?

Mr. Velde: Because the matters about which counsel is asking you are certainly within your own knowledge either to admit or to deny. If they are not within your own knowledge then you can deny that you know anything about them at all. We like to go to the source of information.

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: Yes, but these questions do not relate to propaganda activities.

Mr. Velde: We do not care for any further argument. We would like to hear the answer.

Mr. Beilan: I would like to please have you explain the relevancy of this question.

Mr. Walter: It would be developed quite rapidly if you would answer the question. You would see the relevancy of the whole thing.

Mr. Beilan: Would you please repeat the question?

Mr. Kunzig: Mr. Reporter, would you please read the pending question?

(Whereupon the pending question was read:

"We have testimony that in 1946 and in 1947 you were an organizer of the professional section of the Communist Party of Eastern Pennsylvania and Delaware. Is that correct?")

Mr. Walter: I will explain to you the relevancy of this question. If you would answer to the best of your ability, then we could find out how extensive was the work you did, how many people joined and whether or not those people who joined became active in the dissemination of propaganda.

You see how it is all part of the picture, depending, of course, upon your answer.

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: Is the question, Mr. Chairman, that you want information about other people and not about me?

Mr. Velde: We want all information we can get about the Communist activities, whether it involves you or other people who have been engaged in Communist subversive activities which would destroy this country.

Mr. Beilan: I am willing to talk about myself and about no one else.

Mr. Velde: Please do, then.

Mr. Beilan: Will you agree not to ask me any question about anyone else?

Mr. Velde: We are not making deals with you or anyone else about any evidence you are called upon to give or any answers you are called upon to give.

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: I refuse to answer under the Fifth Amendment.

Mr. Kunzig: Were you a member, Mr. Beilan, of the International Workers Order in 1947 and 1949, a cited organization?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: I invoke the privileges.

Mr. Kunzig: No further questions, Mr. Chairman.

Mr. Velde: Mr. Walter, do you have any questions?

Mr. Walter: Where was this boys' camp that you were connected with?

Mr. Beilan: Your information is inaccurate. It was not a boys' camp. It was a children's camp.

Mr. Walter: Excuse me, please. Where was this children's camp located?

Mr. Beilan: I believe if you have the court reporter read back, you located it.

Mr. Walter: Don't bother.

Mr. Beilan: I will answer it. On Route 309.

Mr. Walter: I am withdrawing the question. What did the children do during the period that you were at the camp? Were they given any courses of instruction on athletic training?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: Well, I think we had a combination program of both athletic activities.

Mr. Walter: You said "I think we did". Did you?

Mr. Beilan: We did have such activities.

Mr. Walter: Now, who were the instructors?

Mr. Beilan: I am sorry, I did not finish.

Mr. Walter: Well, you heard me. You have testified as to what I wanted to learn. Who were the instructors of the camp?

Mr. Beilan: All right. They were Philadelphia teachers, for the most part.

Mr. Walter: Will you give us their names, please?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: We had a staff of about ten or twelve people. I would like a few minutes to recall to my memory exactly the names of those people.

Mr. Walter: To save time, if you will prepare the list and mail it to the committee, that would be satisfactory.

Mr. Beilan: I will be very happy to do that.

Mr. Walter: What educational facilities were provided for the youth?

Mr. Beilan: As a teacher of 23 years I have always had the opinion that we should provide as fine educational facilities as possible. We had a library there of approximately 100 books.

Mr. Walter: What was in the library?

Mr. Beilan: Books which I obtained from the Free Library of Philadelphia at Nineteenth and Parkway.

Mr. Walter: Have we such a list?

Mr. Beilan: I have such a list. I will be glad to mail it to you.

Mr. Walter: Were the children instructed in communism?

Mr. Beilan: I have no knowledge of such instruction.

Mr. Walter: Who was in charge of the camp?

Mr. Beilan: I was.

Mr. Walter: That is all.

Mr. Kunzig: No further questions, Mr. Chairman.

Mr. Velde: The witness is excused.

Call the next witness.

Mr. Beilan: May I please submit a statement? I have a prepared statement.

Mr. Kunzig: Mr. Beilan, would you please return to the stand? I have one more question.

Mr. Walter: Mr. Beilan, I have asked you to come back because your statement was submitted at the completion of your testimony. I am not impugning your motives or beliefs and I have not gone further than five lines of your prepared statement.

You state "I make this statement in good faith and as a personal effort to counteract the false impressions which have resulted from the highly prejudicial publicity which has been leveled against the Philadelphia schools."

I want you to know that there has been nothing done in these hearings that would in anywise reflect on the Philadelphia schools or on the Philadelphia school system. Now if there are any individuals that we feel, in compliance with our duties to the Congress of the United States, should be brought before this subcommittee to testify, that is one thing. But this follows a very similar line.

Now you state further:

> "—unequivocally that I have always been a loyal American, that I have never advocated or participated in any illegal activity against the United States" and so on.

In light of that statement submitted at the completion of your sworn testimony, and this is not under oath, I will ask you have you ever been a member of the Communist Party?

Mr. Beilan: I submitted this statement under oath.

Mr. Walter: No, you did not. This was a statement submitted at the completion of your testimony, after you had left the witness stand.

Mr. Beilan: I will submit it now under oath.

Mr. Walter: All right, now. Do you swear that you have never been a member of the Communist Party?

(At this point Mr. Beilan conferred with Mr. Woolston.)

Mr. Beilan: I refuse to answer.

Mr. Walter: All right. Let this be made a part of the record.

Mr. Beilan: I am not under oath.

Mr. Walter: Oh, yes, you are under oath.

Mr. Woolston: Certainly he is.

Mr. Velde: The witness is excused.

Mr. Woolston: Could you repeat that last question? I do not think he understood it.

Mr. Walter: Read the question back, Mr. Reporter.

(The reporter read the question as follows:

"All right, now. Do you swear that you have never been a member of the Communist Party?")

Mr. Walter: The question was were you ever a member of the Communist Party.

Mr. Beilan: I am not now a member.

Mr. Walter: I said have you ever been.

Mr. Beilan: I refuse to answer under the Fifth Amendment.

Mr. Walter: All right.

Mr. Kunzig: I have no questions, Mr. Chairman.

Mr. Velde: The witness is excused.

That concludes the reading of the transcript of the testimony in the middle of page 314 of the transcript.

By Mr. Rhoads:

Q. Now, Dr. Hoyer, I believe you said that you have read the testimony which I have now offered in evidence regarding Mr. Beilan's testimony before the House Un-American Activities Committee, have you not?

A. I have.

Q. Dr. Hoyer, have you made any charges against Mr. Beilan as a result of his appearance before the House un-American Activities Committee on November 18, 1953?

A. There was a statement in the charges which referred to this investigation.

Q. Will you advise the Board in what respect, in your professional opinion, Mr. Beilan's conduct, demeanor, method of testifying and testimony before the House Committee on Un-American Activities warranted your charging him with professional incompetence?

Mr. Carroll: Mr. President, I think he is asking for the witness' opinion on the law. The facts are that he refused to answer. Whether or not it amounts to an offense or a reason for dismissal in his opinion is certainly not for the Board to hear from him. He has already made the charge. It is now for the Board to decide whether it is a ground for dismissal. I don't think the witness is in a position to give a legal opinion.

MR. RHOADS: I understand Mr. Carroll's objection, but I think the Board will agree with me that we are not asking for a legal opinion in this testimony. We are inquiring of the Superintendent of Schools, charged with the duty under the law, as we read it, of determining professional competency and fitness. And, therefore, I am asking the only expert we have, namely, the Superintendent of Schools, why in his opinion, based upon his professional experience, such conduct does result in what he conceives to be incompetency and lack of fitness.

MR. SAUL: I think the question is a proper question. The ultimate decision as to whether or not the conduct is sufficient in the opinion of the Board—that ultimate question is for the Board. But under the procedure in the first instance it is for the Superintendent, who has made his recommendation and charges to the Board. I think it is incumbent that the Board should know why in his opinion the conduct comes within the statute. So I am going——

MR. CARROLL: I will withdraw the objection, sir.

By MR. RHOADS:

Q. Will you answer the question, Dr. Hoyer?

A. In my opinion, the conduct of Mr. Beilan before the Committee simply supported and confirmed the situation that developed in my own office when I asked him questions in this same area. I was met with an absence of frankness, an absence of candor. I was met with a kind of evasion that was again demonstrated in the testimony before the Committee. And I think what happened before the Committee simply reenforced my own feeling with regard to what had happened in the meetings with me.

You know, the skill, the technical skill of a teacher is merely part of his qualifications for the job. It is a necessary part, to be sure. But there are other aspects of the qualifications of a teacher for a job as a teacher that I think in many instances transcend the technical qualifications of the position.

I think a teacher must be a person who is an intellectually honest person. I think the person who is a teacher must be a frank person; must be a person who deals with candor—deals in a fashion exhibiting candor. Because we are dealing in a peculiarly sensitive area. We are dealing with children who are influenced as much by impression as they are by any instruction or procedure that may go on in the classroom. And in my thinking, Mr. Beilan both in his conferences with me and in his appearance before the Committee gave evidence of a lack of that kind of frankness and candor and intellectual honesty which seemed to me to disqualify him for the position of teaching in the Philadelphia School System or, for that matter, any other school system.

Q. Dr. Hoyer, do you consider it as part of the professional duty of a professional employee of the School System to cooperate with the House Committee on Un-American Activities in hearings such as were held in Philadelphia on November 18, 1953?

A. I think it is a part of the civic responsibility of an individual to cooperate with a duly and properly organized committee of the government.

Q. And is civic responsibility one of the attributes of competency professional fitness of a teacher, in your opinion and experience?

A. It isn't only a matter of my belief, my opinion and my experience, but it is an item that is cited in the formal rating scheme prepared by the State of Pennsylvania.

Q. And what relation does the attribute of intellectual honesty, to which you have referred as being one of the qualifications of a competent teacher, have with the failure of that teacher to testify before a committee such as the House Un-American Activities Committee?

A. Well, I think it must be evident—it was evident to me, as it must be to most persons, that there was a withholding of information here that might have been given: And I think when a person has information that might be helpful to a committee of this kind and doesn't give it, then that person is not intellectually honest.

Q. Dr. Hoyer, in your opinion and based upon your long experience, is one of the attributes of a well-qualified, competent and fit teacher, respect of the community in which he lives and works?

A. When a teacher loses the respect of the community he has lost his usefulness in that community. That is sort of backing into that question but, nevertheless, that is the case. A teacher must have the respect of the community in order to do a satisfactory job in that community.

Q. When a teacher circumstanced such as Mr. Beilan on November 18, 1953, claims the privileges of the Fifth Amendment before the House Un-American Activities Committee, what, in your judgment and based upon your experience, is the effect of such action on his part so far as his respect in the community is concerned?

A. If you are asking me——

MR. CARROLL: Mr. President, I don't think that this witness is in a position to give the opinions of other people.

MR. RHOADS: I didn't ask for the opinions of other people, and if I did that, I will withdraw

any portion of that question that related to the opinions of other people and limit the question entirely to the opinion of this witness based upon his long experience as an educator and directed toward the question which I have asked.

MR. SAUL: Do I understand that you are asking a purely hypothetical question?

MR. RHOADS: I am not asking a hypothetical question. I am asking a question as to what effect, based upon his experience, the refusal of a witness or of a teacher to testify before the House Un-American Activities Committee would have so far as the respect of the community in which he is working is involved.

MR. CARROLL: Sir, in short he is asking for the opinion of the community in the opinion of Dr. Hoyer. Even Mr. Gallup should not be permitted to give a thing like that. I think that unless this man has taken some sort of a sampling or can show some concrete evidence of people to whom he has spoken, representatives of the community, then he is certainly not in a position to give such testimony as this.

MR. RHOADS: If there is any question by the Board of the Superintendent of School's competency to pass upon a question of that kind, I am willing to withdraw the question. I would think the Board would want his answer. But if there is the slightest suggestion that we are limited as though we were in a courtroom, which is distinct from this proceeding which I conceive to be an inquiry, an inquiry broad in its scope and in its character toward the professional fitness of a teacher, then I am not going to press the question because

I think that evidentially it might be full of all kinds of holes.

MR. SAUL: You are withdrawing the question?

MR. RHOADS: I am prepared to withdraw the question, sir.

MR. OBERMAYER: I would like to hear the question.

(The question was repeated by the reporter as follows: When a teacher circumstanced such as Mr. Beilan on November 18, 1953, claims the privileges of the Fifth Amendment before the House Un-American Activities Committee, what, in your judgment and based upon your experience, is the effect of such action on his part so far as his respect in the community is concerned?)

MR. SAUL: I think the objection is well founded in that an answer to that question would involve the witness stating what he believed is the reaction of the community now to this particular teacher's action. And I think the objection is well founded, unless there is some ground laid for Dr. Hoyer's ability to state what the reaction is.

MR. WEINROTT: Well, Mr. Saul, may I make my position clear?

MR. RHOADS: Well, Mr. President, I will come right back at that, and if it is a question of asking for the community's opinion, maybe he can't give it. I am going to ask what opinion he has so far as the effect on the respect which Dr. Hoyer has for this individual teacher—his failure to so answer has.

MR. SAUL: There is no objection to that. He is the Superintendent of Schools and he has a right to advise this Board of his reaction to it.

MR. RHOADS: And I am now limiting the question to his reaction.

MR. SAUL: Is there any objection to his own reaction to it?

MR. CARROLL: None whatever, sir. I assume the former question is withdrawn.

MR. SAUL: It is withdrawn.

MR. CARROLL: Thank you.

THE WITNESS: My own reaction to that situation was unquestionably an unfavorable one. As I have indicated before, I felt that Mr. Beilan in his attitude and in his answers to the Committee was not frank; did not exhibit candor; did not exhibit those qualities that I think are essential to a teacher. And that is bound to influence my opinion with regard to his behavior there.

By MR. RHOADS:

Q. Now, Dr. Hoyer, limiting your answer entirely to your own reaction to the conduct of a teacher, what is the effect upon you, as Superintendent of Schools, of the refusal on the grounds of the Fifth Amendment of Mr. Beilan to answer the questions which were propounded by the House Un-American Activities Committee on November 18, 1953?

MR. CARROLL: Mr. President, if it please, this is either the same question or it is back to the witness' opinion of the law. I think he has just answered that question.

MR. SAUL: You are objecting to the question?

MR. CARROLL: Unless Mr. Rhoads is attempting to get the community's opinion again indirectly.

MR. SAUL: I understand this question is directed purely to Dr. Hoyer's personal reaction.

MR. RHOADS: That is exactly it and no more. And the question is limited also to the Fifth Amendment, sir.

MR. SAUL: I think the Board is entitled to Dr. Hoyer's reaction.

THE WITNESS: Well, I believe that Mr. Beilan had a right to invoke the Fifth Amendment in this matter if he chose to do so. But I don't think he had the right to invoke the Fifth Amendment and remain a teacher in the Philadelphia School System.

MR. RHOADS: That is all.

MR. SAUL: Cross-examine.

CROSS-EXAMINATION.

By MR. CARROLL:

Q. Doctor, getting back to the 25th of June, 1952, or prior to that, you stated that you sent notice——

MR. RHOADS: Mr. Carroll, Dr. Hoyer said he couldn't hear you. Will you raise your voice?

By MR. CARROLL:

Q. Getting back to the first interview, Doctor, you stated that you sent notice to Mr. Beilan of this interview; is that correct?

A. That is correct.

Q. Did you state in your notice the subject matter of the interview?

A. No, I did not.

Q. At the time of the interview itself did you state the subject matter of the interview?

A. I think so.

Q. How did you do so?

A. I did it by asking a question at the request of Mr. Beilan, taken from the material that I had. The material I had was not in question form, but I based a question on the material that I had.

Q. In other words, he asked you to give him some information as to the scope of the interview; what it had to deal with?

A. That is correct.

Q. And in answer to that request you read him the question which you have formerly stated?

A. That's right. Of course, I indicated to him before that that I had this information and that I wished him to indicate to me whether the information was correct or not.

Q. We understand that. Did he then ask you to read the other questions that you had in mind asking him?

A. Yes, he did.

Q. And did you do it?

A. I did not.

Q. Did he ask you again later in the interview to do it?

A. That is possible. I wouldn't recall that exactly.

Q. You stated in your testimony that towards the end of the interview he did. Do you recall it now?

A. No, I didn't say that.

MR. RHOADS: I am not sure that he did. But the record will show whatever it was. But, as Dr. Hoyer has said, it might well have been the case.

By MR. CARROLL:

Q. In short, Doctor, would it be true to say that despite this man's attempts to get from you information as to the scope of the interview, the limit of your proposed questioning, you did not give it to him except by telling him one question?

A. That is correct, because he had indicated to me very definitely that he could not answer that question. I saw no point to asking additional questions when he didn't answer the first one.

Q. Didn't you testify, Doctor, that at the first interview the net result was that you suggested that he seek counsel?

A. No, I did not.

Q. You agreed——

MR. RHOADS: I don't think the testimony so indicates.

THE WITNESS: I indicated to him that I was satisfied to have him consult counsel.

By MR. CARROLL:

Q. And that was perfectly agreeable to you?

A. That was agreeable to me, yes.

Q. You excused him on that basis?

A. That's right.

Q. You did not then insist on an answer to that question?

MR. RHOADS: Just a minute. If the Board pleases, I would like to have a definition of what is the connotation of the word excused. If by the question it means he was excused from further discussion, I have no objection to the question. But if there is any suggestion in that question that Dr. Hoyer in June of 1952 excused the conduct, then I object to the question.

MR. SAUL: I don't think there is any such connotation. I don't think any of us so understood it.

By MR. CARROLL:

Q. All that I wish to get from you, Doctor, is whether or not at that time you insisted on an answer

to that question then, or did you instead acquiesce in Mr Beilan's suggestion that he seek counsel?

A. I asked the question. If that is insistence, I insisted. If it isn't, I didn't. I simply asked the question in a perfectly normal relationship between Superintendent and teacher. I wanted to get a constructive answer to it if I could. And that is all there was to that.

Q. And you stated, I believe, in your direct examination that when he suggested that he wanted to see counsel—I think your very words were, that was entirely satisfactory to you.

A. That is right.

Q. To return to the former question, you did not, therefore, insist on an answer to that question then?

A. No.

MR. RHOADS: That is objected to on the ground that he has already answered the question a half dozen times.

MR. CARROLL: The witness has answered the question.

By MR. CARROLL:

Q. Did you at this interview allow him to have his counsel present?

A. No.

Q. Did you offer to confront him with the person who had made these statements about him which you thought were so——

A. No. This was not a hearing or a trial——

Q. The question is——

MR. RHOADS: Wait a minute. Let him answer the question.

MR. CARROLL: He is not answering it.

MR. RHOADS: He is answering it to my satisfaction at any rate. If you want to ask him anything more, go ahead.

THE WITNESS: There was no necessity, as I saw it, at that time for me to do anything of the sort.

By MR. CARROLL:

Q. Was it your thought, Doctor, that all of these questions which you intended to ask him would deal with his loyalty?

A. Will you say that again?

Q. Was it your intention to ask him questions about his loyalty?

A. It was my intention to ask questions dealing with the information that I had.

Q. Did all that information relate to loyalty?

A. That information related to a number of things. You might say loyalty was one of them.

Q. Would you state the others?

A. Yes.

MR. RHOADS: If the Board pleases, this witness has already stated that the questions had to do with his association with the Communist Party, with front organizations and with subversive activities. And I think that, under those circumstances, whether the matter had to do with loyalty is a conclusion that this Board may reach rather than as a definition coming from him.

MR. SAUL: I should think that if, as counsel states, it is agreed that the information had to do with the items that Mr. Rhoads says, that you have got all that you want.

MR. CARROLL: I will put the question that way then.

MR. RHOADS: As the witness has already testified in his direct examination.

MR. SAUL: I think it is perfectly proper that that should be on the record, but I think with your statement it is on the record.

By MR. CARROLL:

Q. Doctor, you heard Mr. Rhoads' description of the type of question you intended to ask, did you?

A. Yes, I heard that.

Q. Is that an accurate statement of the questions you intended to ask?

A. Yes.

Q. The type of question?

A. Yes, that is fairly accurate.

MR. RHOADS: If you want to add to it, Dr. Hoyer, go ahead.

THE WITNESS: I don't want to add anything to it.

By MR. CARROLL:

Q. You said on your direct examination, Doctor, that you considered this inquiry part of your duties as Superintendent of Schools, correct?

A. Considered what?

Q. The conduct of this interview as part of your duty as Superintendent of Schools.

A. That is correct.

Q. Under what law, sir?

MR. RHOADS: I object to that, sir, because I think that is again a matter of conclusion. Dr. Hoyer has testified that this was a professional interview brought about because he felt that it was part of his duties to do so. And whether he acted properly is a matter for this Board to conclude, and whether he acted under the law is a

matter for this Board to conclude under advice of counsel or its own deliberate and separate consideration.

MR. SAUL: I am inclined to believe that as long as Dr. Hoyer was given full opportunity to express all of his reasons and his personal opinions as to why he took this action, the question if it can be answered by Dr. Hoyer is a proper one. I don't think we should limit the examination.

MR. CARROLL: Thank you, sir.

By MR. CARROLL:

Q. Perhaps I can make the question a little easier for you, Doctor, by sub-dividing it. Did you conceive that you were proceeding under the Pechan Act?

MR. RHOADS: That is objected to, sir. I don't care what act he conceived he was acting under. He did a certain thing. And I am not going to permit, so long as I am in the position of trying to advise in this hearing, this record to show that Dr. Hoyer called somebody in thinking in terms of sub-section 1 of some law and acted accordingly. He was acting as the Superintendent of Schools, and he either acted properly in an attempt to find out the fitness and competency of a teacher or he didn't. And I don't purpose to have the record, if I can help it,—to have the record of these hearings find Dr. Hoyer, Brewster Rhoads or any member of this Board committed to some proceeding in accordance with the section of an act or something of that kind which my friend is trying to get. What he is trying to do is to convert this hearing into a suggestion that what we are doing here is testing out this man's

loyalty. Dr. Hoyer was trying to find out the professional fitness of a teacher.

MR. CARROLL: Mr. President, if you please, I have no intention of seeing this proceeding become a loyalty hearing. Mr. Rhoads has stated that it is not. I agree with him completely. I think that you all agree with me, however, that the office of the Superintendent of Schools is an office created purely by statute, and that his actions in any case depend upon the authority granted him by a statute of this Commonwealth. Whether or not he believes he is acting properly and whether or not he was in fact acting properly, is a crucial issue in this hearing. Since Dr. Hoyer has been given such a free reign in his direct examination to discuss what I believe to be the law, it would seem to me that we ought to be able to question him on whether or not he thought he had authority and where he thought he got it.

MR. RHOADS: Let Dr. Hoyer answer the question.

MR. SAUL: I am going to rule that he may answer the question.

MR. LABRUM: I would like to take an appeal from that because I don't believe that Dr. Hoyer or any complaining witness has to set forth the section of a particular statute under which he makes a complaint. That is utterly ridiculous for a superintendent in the public schools to have to sit down and read the law when he is advised by his counsel whether or not under certain circumstances an action lies. I don't think he has to answer that question. I would like to take an appeal from your ruling, Mr. Chairman.

MR. DOWNS: I second it.

MR. SAUL: Read the question.

(The question was repeated by the reporter as follows: Did you conceive that you were proceeding under the Pechan Act?)

MR. SAUL: The question is shall the Chair be sustained. If you answer yes, the Chair is sustained. If you answer no, the Chair will be overruled. Call the roll, Mr. Secretary.

(The Secretary called the roll.)

MR. SAUL: The Chair has been overruled and, therefore, the objection to the question is sustained by the Board.

By MR. CARROLL:

Q. Dr. Hoyer, did Mr. Beilan at the time of either interview ask you by what authority you were acting?

A. No.

Q. Do you recall any conversation with Mr. Levitan, counsel for the Teachers' Union and for Mr. Beilan, between the time of the first and second interviews specifically requesting from you information as to what you conceived to be your authority for asking these questions?

A. I had no conversation with Mr. Levitan.

Q. You stated, Doctor, that in your opinion the refusals of Mr. Beilan to answer your questions and those of the Velde Committee——

MR. RHOADS: May we use the expression the House Un-American Activities Committee?

MR. CARROLL: That is perfectly agreeable.

MR. RHOADS: I would suggest that the record not be confused with personalities which sometimes become unfortunate in these matters.

MR. CARROLL: I will omit that reference from the question.

By MR. CARROLL:

Q. I will limit my question to the interviews with yourself, sir. Did you believe that Mr. Beilan's refusal to answer your questions demonstrated his incompetency as a teacher?

A. Yes, I considered that.

Q. Did you report that to his principal?

A. No, I did not. I didn't report anything dealing with this matter to his principal.

Q. Did you rate Mr. Beilan in that term on the prescribed State rating form one way or another? Did you rate him?

A. I did not rate him at that time.

Q. But at that time you believed him incompetent; is that correct?

A. I think that is reasonably correct.

Q. It is your duty to rate as unsatisfactory teachers whom you believe incompetent; is that correct?

A. That is correct.

Q. But although you believed Mr. Beilan incompetent at that time, you did not so rate him; is that correct?

A. No, that is not correct. But I did not pass it on to the principal of the school at that particular time. And there are a number of reasons for that.

MR. RHOADS: State the reasons.

By MR. CARROLL:

Q. You have since that time, however, rated Mr. Beilan unsatisfactory?

A. That is correct.

Q. When did you do that, Doctor?

A. I did that at the time of his suspension.

Q. Which was——

A. I think it was November 20, 1953.

Q. Do you have the rating slip there, Doctor?

A. Yes, sir, I have it here.

Q. Doctor, do you recognize these cards which I now hand you as the official records of ratings for the Philadelphia school teachers?

A. These are the cards that are kept in the schools for teachers.

Q. These deal with Mr. Beilan; is that correct?

A. They deal with Mr. Beilan.

MR. RHOADS: If the Board please, if there is any question possibly we can cut the knot here. There is no issue, so far as counsel for the Board is concerned, as to any unsatisfactory ratings of Mr. Beilan in so far as his classroom performance is concerned. I think, as I have indicated to the Board before, that has not been in issue and is not in issue here.

MR. SAUL: Of course, these hearings are all separate, and we have to have the same——

MR. RHOADS: I am prepared now, Mr. President, to so state to Mr. Carroll.

MR. SAUL: State it for the record.

MR. RHOADS: In so far as the performance of Mr. Beilan's duties in the classroom is concerned, there is nothing, so far as the records of the School Board are concerned, to show anything to the contrary other than a satisfactory performance.

MR. SAUL: Well, could you add to that, if it be a fact, that there is no complaint in this proceeding about his classroom performance?

MR. RHOADS: I will agree to what the President has just said as being a statement with which I can concur.

MR. SAUL: Is that satisfactory?

MR. CARROLL: Fine. Thank you, sir. I would, however, for a moment like to pursue this.

MR. SAUL: All right.

By MR. CARROLL:

Q. Could you explain, Doctor, the significance of these terms on the rating card? These are abbreviations. The first one is "INS".

A. That is instruction.

Q. The second one is "MAN".

A. Management.

Q. The third is "COOP".

A. That is cooperation.

Q. In other words, Doctor, this rating is made on the basis of not only instruction and management but also cooperation?

A. That is correct. That is right.

By MR. DOWNS:

Q. Cooperation with whom?

A. Cooperation with the principal of the school.

MISS GOLDEN: Mr. President, I should like to raise a question here. I think it would be helpful if Dr. Hoyer would explain why he did not pass on to the principal of the school the information he had, or the rating he was giving to this particular person.

MR. SAUL: Miss Golden, may I suggest that the questions from the Board be asked after the cross-examination is concluded?

MISS GOLDEN: That seems to me to be the question in the mind of the attorney, as to why this wasn't passed on.

MR. RHOADS: I had that down, Miss Golden, to ask the witness as soon as he was turned over to me for re-direct examination, the reasons why Dr. Hoyer did not immediately turn it over, so that I have not neglected it in my notes here.

MISS GOLDEN: I thought the line of questioning was directed to that.

MR. CARROLL: I will leave that for Mr. Rhoads.

By MR. CARROLL:

Q. The last rating on that card, Doctor, is dated November 30, 1953; is that correct?

A. That is correct.

Q. And what is the rating?

A. The rating is marked "80". Numerically it is marked "80".

Q. Is that a percentage rating, Doctor?

A. That is a percentage rating.

Q. Is that considered a satisfactory rating?

A. That is a satisfactory rating.

Q. What would you say would be the lowest percentage rating that would be considered satisfactory? Is there a rule on that, Doctor?

A. The lowest rating that would be considered satisfactory would be 70 for this particular situation.

Q. And this is 80?

A. That's right.

Q. And what is the notation beside that rating, Doctor?

A. The word "suspended", you mean?

Q. That's right.

MR. CARROLL: I should like, if the Board please, to offer in evidence as Beilan's Exhibit No. 1 the rating card which we have referred to, for the purpose of showing that over a period of twenty-three years all of Mr. Beilan's ratings, which, as Dr. Hoyer explained, include not only instruction and management but also cooperation with other people in the school, are satisfactory or better. And that even on November 30, 1953, after this particular experience with the Un-American Activities Committee of the House of Representatives had become known, and after apparently his appearance before Hoyer had become known to the principal of the school, he was nevertheless rated 80 percent by the principal.

MR. SAUL: No objection to that, I take it, Mr. Rhoads?

MR. RHOADS: Oh, no. It is all a matter of record.

(Two rating cards of Herman Beilan were marked for identification as Beilan's Exhibit No. 1.)

MR. SAUL: It will be admitted.

MR. RHOADS: I don't go along with my friend's argumentative statement, but the records are there and they speak for themselves, of course.

MR. SAUL: I understand. It is only the record that is submitted.

MR. WEINROTT: Technically he had it marked for identification. In his case he normally would offer it.

MR. SAUL: It doesn't make any difference. It is admitted in the record now.

MR. WEINROTT: If you want to admit it out of order——

MR. SAUL: Yes. We will admit it now. It is right in the place where the examination is going on.

By MR. CARROLL:

Q. Doctor, by way of a question in summary, your rating of unsatisfactory, which you stated you made on November 23, 1953——

A. November 20.

Q. Pardon me. November 20, 1953. That is predicated purely on the refusal to answer your questions and the questions of the House Committee on Un-American Activities.

A. That is correct.

Q. No other reason at all; is that correct?

A. The reasons growing out of that situation.

Q. Doctor, you stated on direct examination by Mr. Rhoads that in your professional opinion a teacher had the right to refuse on the ground of the Fifth Amendment to the United States Constitution to answer a question put to him by a committee of the House of Representatives of the United States.

A. That's right.

Q. But that he did not have the right simultaneously to do that and continue as a school teacher.

A. That is correct.

Q. Could you state offhand, Doctor, any other rights of a citizen which a teacher must give up in order to be a teacher in your system, or is this the only one?

MR. RHOADS: Of course, it seems to me that that is completely beyond the scope of these charges, but if the Board would be interested in

having Dr. Hoyer's observations, I have no objection to the question.

MR. CARROLL: It goes to the basis for his opinion.

MR. SAUL: Is it objected to?

MR. RHOADS: I am not going to object to it unless the Board feels we are wasting time. Go ahead, Doctor.

THE WITNESS: Well, I would be glad to answer that. I think there are a number of rights or a number of ways of doing things that a teacher may not indulge in and remain to be a teacher. Some of them are specifically referred to in the Tenure Act, for example. Historically a teacher has been expected to lead an exemplary life. He has been expected to lead a life that is above reproach. And when a teacher does not lead a life that is above reproach he forfeits his right to be a teacher. I think in that general category there are some rights——

By MR. CARROLL:

Q. Constitutional rights, Doctor?

MR. RHOADS: Just a minute. Let him answer.

THE WITNESS: There are some acts that probably would not be considered immoral acts in certain other areas of the community, but in the life of a teacher they are distinctly immoral acts and can not be condoned on the part of the teacher. There are certain freedoms which an individual gives up when he becomes a teacher. There isn't any question in my mind about that. He dedicates himself to a kind of life that is different from that of the ordinary citizen.

By MR. CARROLL:

Q. Doctor, you have been apprized, I have no doubt, or have at least read in the newspapers, of Dr. Albert Einstein's view of this matter. Would you fire him?

MR. RHOADS: Now that I object to, sir. The issue of Dr. Einstein, the issue of the G. E. or the issue of any other activities outside of what is going on in connection with these charges I do object to, sir.

MR. SAUL: The objection is sustained. I think that is properly part of your argument.

MR. CARROLL: I have no further questions.

RE-DIRECT EXAMINATION.

By MR. RHOADS:

Q. Dr. Hoyer, Mr. Carroll has referred to the rating card going back a number of years of Mr. Beilan and terminating, I believe, in November of this year, the latter part of November, with the notation of "suspended" thereon. You have seen that card.

A. That is correct.

Q. Now, prior to the making up of that card and the later entries that were made thereon, you had had conferences with Mr. Beilan which lead you, as you said, to conclude that he was incompetent and unfit by reason of his failure to answer you; is that correct?

A. That is right.

Q. Did you communicate to his principal your conclusion at that time as to the competency of Mr. Beilan?

A. I did not communicate with the principal.

Q. And why did you not?

A. I didn't communicate with him at that time because I had before me a considerable number of these cases. Out of consideration for the individuals who were concerned I wanted to move very slowly and very carefully in my investigations of those cases and of the material that I had before me. This took a considerable amount of time, as you may suppose, because there are some other things that a Superintendent of Schools must do in order to fulfill all the requirements of his position. This took a long period of time. And I did not communicate with anyone concerning any of these conferences that I had because I didn't know what the outcome of this would be at the time. Therefore I did not communicate with the principal of the school.

Now may I say, Mr. Rhoads, just a word with regard to that last notation on the card?

Q. The notation "suspended"?

A. Well, the whole line there. The line all the way across there giving the date and certain other figures and the word "suspended" is with it.

We ask the principal of a school at the time a person leaves the School System to give a rating. But the principal of the Gratz High School was under no necessity for giving a rating at this particular time at all because it had not been determined at that time that Mr. Beilan was to leave the School System, and it hasn't yet been determined that he is to leave the School System. I suspended him, true. But this notation did not have to be made. This is part of, I think, the fact that Dr. Hoffman hasn't been there too long and perhaps hasn't met this situation before.

Q. Is Dr. Hoffman the principal of the Gratz School?

A. He is the principal of Gratz High School.

Q. And was it Dr. Hoffman who made or under whose supervision were made the last entries of 11-3-53?

A. I would say so, yes.

Q. At the time these entries were made had you discussed with Dr. Hoffman the circumstances involved in the charges which are now being considered?

A. I hadn't discussed this with anyone—in the respective schools?

Q. That is what I mean. In other words, Dr. Hoffman was Mr. Beilan's principal, was he not?

A. That is right.

Q. And you considered that this was a matter of policy between you and the Board of Public Education; is that not correct?

A. That is correct.

Q. And incidentally, the matter had been before you and before the Board for many months prior to November, 1953; is that correct?

A. That is right.

Q. And it was a matter upon which you felt that you should act with fairness, slowness and discretion; is that correct, Dr. Hoyer?

A. Unquestionably. From the point of view of a professional relationship it was absolutely necessary that I do that. Not only was it necessary, but congenial.

MR. RHOADS: Now, Mr. Carroll, have you the letter of November 20, 1953, which was sent to your client by Dr. Hoyer?

MR. CARROLL: The letter is dated November 23. I think that is the one you are referring to.

MR. RHOADS: I thought it was November 20, but whatever date it is. It is November 23. Thank you, Mr. Carroll.

Mr. Carroll has produced, and I offer as Board's Exhibit No. 4, the letter of November 23, 1953, from Louis P. Hoyer, Superintendent of Schools, to Mr. Herman Beilan, in which the Superintendent of Schools states, "You are rated unsatisfactory," and then gives his reasons therefor which I do not think need be read into the record at this time if I offer the letter itself, if that is satisfactory to you, Mr. Carroll.

MR. CARROLL: Yes.

MR. RHOADS: I offer such letter.

(Letter dated November 23, 1953, was marked for identification as Board's Exhibit No. 4.)

MR. RHOADS: May we use a copy because you have some notations there that I don't want to pry into. I don't know what they may be. We will offer a copy in substitution for the original.

That concludes the Board's case, Mr. President.

By MR. OBERMAYER:

Q. Dr. Hoyer, I wanted to ask you whether at the meeting with Mr. Beilan on June 25 and October 14, 1952, there was anyone else present but yourself and Mr. Beilan.

A. Mr. Soken was present.

Q. Just the three of you?

A. That is all.

Q. Was there any publicity given to this hearing in advance?

A. Not only was there no publicity given to it either at that time or later, but there was a decided desire on our part not to make this thing spectacular because at that time it was a legitimate inquiry, as I

conceived it, into a matter that pertained to the excellence, to the quality of a teacher's service.

Q. The only persons there were Mr. Beilan, Mr. Soken and yourself?

A. That's right.

Q. Mr. Soken is connected with counsel?

A. Mr. Soken is the Assistant Solicitor of the Board.

By Mr. Weinrott:

Q. Dr. Hoyer, I would like to get this on the record because a lot of these questions, I think, that Mr. Carroll asked were of your opinion, but I thought Mr. Rhoads had qualified you more or less as an expert in public education. Now, is it a fact that over the last forty-six or forty-seven years of your identification with the School System of Philadelphia that you have actually had exposure to, seen, talked with millions of children at all levels of the School System, not only in Philadelphia but all over the United States, and thousands upon thousands of school teachers and administrative officers both in the Philadelphia public schools and other public schools in the whole of the United States, and from time to time you have talked with these people generally and specifically about a lot of things?

A. That is true.

Q. Exchanging information?

A. Yes.

Q. And whatever it is school teachers and school people do. Is that a fact?

A. That is a fact. I don't know whether I can subscribe to the millions but——

Q. Well, hundreds of thousands then. I think if you added up each year you will probably get into the million class. Then do I understand that if a teacher

has lost that touch and that confidence, in your opinion now and from your long association, that that teacher actually in your opinion destroys or loses his or her efficacy as a teacher?

A. There is no question in my mind about that.

MR. CARROLL: Mr. President, this is the same question Mr. Rhoads asked about his impression and the community's impression and which we objected to before. I repeat the objection, sir.

MR. RHOADS: May I suggest that it is not the same question. It is a very entertaining and interesting question.

MR. SAUL: If the question has no reference as to whether or not this particular teacher has lost the confidence of the community, I think it is perfectly proper to ask the question. But if the inference or the implication of the question is that this particular teacher has lost the confidence of the community, then I will rule the question is improper.

MR. CARROLL: Sir, on the former hypothesis that it is a general question, it is plainly irrelevant. If it is the particular question to which you refer, then it is objectionable on the grounds previously stated.

MR. SAUL: If it is irrelevant the Board can consider that at the time when it considers the testimony. But I think it should be made plain at this time whether this question has any reference to the loss of faith on the part of the community in this particular teacher.

MR. WEINROTT: Well, of course, it was a general question.

MR. SAUL: And has nothing to do with this particular teacher?

MR. WEINROTT: No.

MR. LABRUM: I make the observation, Mr. President, that the judge has a right to ask any question he sees fit in order to come to a determination as to the merits of a particular case, whether it is relevant or irrelevant.

MR. SAUL: That is true. But counsel still has the right to put an objection on the record to the question.

MR. LABRUM: They can yell but it doesn't get them any place.

MR. CARROLL: Mr. President, I should like a formal exception if the objection is overruled.

MR. SAUL: Well, you may have it. The question, I think, has been answered with the understanding that it has no particular reference to this particular teacher's——

MR. WEINROTT: That's right.

MR. SAUL: Is there anything further that either of you two gentlemen desire to offer?

MR. RHOADS: I have nothing further.

MR. SAUL: Then you may proceed with the defense.

MR. CARROLL: Mr. President and Members of the Board, as I stated before, we have no intention of making a loyalty proceeding out of this hearing.

MR. DOWNS: I can't hear you.

MR. CARROLL: We have no intention of making a loyalty proceeding of this hearing. We agree

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MR. SAUL: The question has been objected to and the Chair rules that that question is not a proper question to be directed to counsel, the hearing having been closed and the testimony closed. Is there any appeal from the decision?

MR. WEINROTT: No, I won't take any appeal. I want to ask another question. As a factual situation——

MR. LABRUM: Is this record closed? Let's get this straight. Because I don't want the record to show that you are asking a lawyer a question that has nothing to do with the case. Let's get it straight. Is the record closed? Was the record closed before you began?

MR. WEINROTT: All right, I withdraw the question.

MR. SAUL: Gentlemen, under our rules of procedure counsel for either side may within ten days from today file a written brief to present to the Board. The stenographer will get the testimony out as soon as possible for the use of counsel. A copy will be given to you, a copy to Mr. Rhoads and a copy to the members of the Board. And at the end of ten days these hearings will be closed in accordance with the provisions of the statute.

MR. DOWNS: This hearing you mean.

MR. SAUL: This hearing.

MR. OBERMAYER: Mr. Saul, I think we ought to say to Mr. Carroll that if he sends us one copy of his brief the Board of Education will see that additional copies are made to go to the Board. It will not be necessary for you to prepare a large

with Mr. Rhoads and Mr. Weinrott who stated that the only issue is whether this particular man refused to answer certain particular questions and whether, as a matter of law, that amounts to a ground for dismissal. We have already heard the questions that were asked and answered under certain circumstances which we have attempted to develop.

The conclusion is attempted to be drawn that this has to do with his competency and is a violation of the School Code. I think that all the evidence we want to present on the question of competency is already in the record. Since it seems so vague and nebulous a thing, what the particular laws are which have been violated, and we can't discover them, we are not in a position to present evidence on that. Therefore, sir, we intend to present no evidence on loyalty, competency or violation of the School Code.

We would simply like to state to the Board that although we agree that there is this very narrow issue of refusal to answer questions, nevertheless, the undertone of this entire unhappy proceeding has had to deal with loyalty. Therefore, we intend to prevent, if possible, any evidence of it in this proceeding. We earnestly invite the Board to begin, with respect to Mr. Beilan, proper, formal loyalty proceedings under the Pechan Act where it properly belongs and nowhere else. With that we have finished.

We thank the Board very kindly for a fair hearing.

MR. RHOADS: With submission to the Board, I simply want the record to show that formally I do not subscribe to the language which Mr.

Carroll has used in connection with his concept of the issues that may be involved. I want nothing to indicate that my not making argument here is concurrence with any inferences which may have come from the statement which he has just made. And I don't think it is necessary for me to argue the question.

MR. SAUL: I think we all understand you don't agree with his conclusion.

MR. WEINROTT: May I ask Mr. Carroll a question? Mr. Carroll, I want to know from you as a lawyer whether it is your conception of the proper management of a school system, a public school system, that when a teacher is called—I don't care what the reason is—by the Superintendent of Schools and is asked to answer questions of any kind in connection with schools and school work and himself in connection with schools, that that teacher does not have to answer those questions?

MR. LABRUM: Mr. Chairman, I object to that. I don't think that is fair to put a lawyer on the spot that way. That is aside from the fact we are sitting here hearing the case. I object to that. I don't think that is fair.

MR. OBERMAYER: Mr. Carroll is just a lawyer here.

MR. LABRUM: He has no right to be subjected to cross-examination, and you know that better than anyone else.

MR. CARROLL: Even more properly, sir, the Board has no right to be subjected to the speech I was about to make.

number of copies to go to each member of the Board.

MR. CARROLL: Thank you very much.

MR. OBERMAYER: I think it also ought to be understood when this meeting is adjourning today, it is adjourning with the understanding that the taking of testimony has ended, and the only reason for the ten-day adjournment is in order to permit counsel to file briefs, and no additional testimony will be taken by reason of that ten-day adjournment.

MR. CARROLL: That is understood, sir.

MR. SAUL: Mrs. Lewis, do you have a question?

MRS. LEWIS: I had one question I would like to ask Mr. Beilan. As I understand from the record of the Un-American Activities Committee——

MR. RHOADS: Mr. Beilan has not been sworn.

MR. SAUL: I rule that as this is a hearing on charges made against Mr. Beilan, any member of the Board has the right to ask Mr. Beilan a question if he or she so desires.

MR. RHOADS: May I be heard for one moment, Mr. President, on that? Obviously I would be the last person to object to any such proper ruling that you have just made with which I entirely agree and to which I subscribe, but this is a hearing. It is a hearing under statute. And a witness who is heard, I respectfully suggest, should be sworn. That is all I am asking.

MR. SAUL: I think that is true, sir. Did you say you withdrew the question?

MRS. LEWIS: Technically I hadn't realized Mr. Beilan was not a witness. There is a question I would like to ask him if he would be sworn.

MR. SAUL: You would like to?

MRS. LEWIS: Yes, but not if it upsets things.

MR. SAUL: I rule that Mr. Beilan may be sworn and that Mrs. Lewis may ask the question if she so desires. Is there any appeal from that decision?

MR. LABRUM: Yes, sir, there is an appeal. I would like to be heard on it. You are compelling this man to testify against the advice of his attorney. And this Board has no right to compel him to testify. And I think it is a very, very extraordinary procedure if you do.

MRS. LEWIS: I withdraw the question.

MR. SAUL: The question is withdrawn. Are there any other comments or questions by any members of the Board before we adjourn this for ten days?

MR. DOWNS: Just for my own information, Mr. LaBrum, this defendant here has not said whether he didn't want to testify or not.

MR. LABRUM: His counsel has not offered him to testify. His counsel is the one who determines that.

MR. DOWNS: I missed that.

Board's Exhibit No. 1.

(Letter dated June 19, 1952, from Louis P. Hoyer to Herman A. Beilan. The letter was read into this transcript beginning on Page 21a.)

Board's Exhibit No. 2.

(Letter dated October 9, 1952, from Louis P. Hoyer to Herman A. Beilan. The letter was read into this transcript beginning on Page 21a.)

Board's Exhibit No. 3.

(Transcript of testimony of Herman Aaron Beilan before a Sub-Committee of the House Un-American Activities Committee of the House of Representatives on November 18, 1953. The testimony is copied into this transcript beginning on Page 24a.)

Board's Exhibit No. 4.

November 23
1953

Mr. Herman Beilan
7641 Thouron Street
Philadelphia 38, Pennsylvania

Dear Mr. Beilan:

You are rated unsatisfactory as the result of two interviews I had with you, one on June 25, 1952 and the other on October 14, 1952, and also as a result of your refusal to answer certain questions asked of you by the Sub-Committee of the House Committee on Un-American Activities, on Wednesday, November 18, 1953, in the Court House, Ninth and Market Streets.

I told you at the beginning of our conference on June 25, 1952 that certain information had come to me which, if true, reflected seriously on your professional qualifications to be a teacher. I told you that our conference was on a professional basis and that in fairness to you as a professional employe I was going to ask you directly to confirm or refute the statements I was about to read to you. I then asked you whether in 1944 you were press director of the professional section of the Communist Political Association. You said you wanted advice of counsel and would call me to arrange for a further appointment. You also said you wanted to hear the rest of the questions and asked what the last date was on the sheet from which I was reading, but I did not tell you because you refused to answer the first question.

On October 14, 1952, at our second interview you said you had obtained the advice of your counsel, Mr. Levitan, who said you could not legally be asked questions about political and religious beliefs, and that

there was no legal basis for asking these questions. You were also told that you risked possible dismissal if you persisted in your refusal. You said you understood this.

You refused to answer questions as to your past associations with organizations of doubtful loyalty when asked by the Sub-Committee of the House Committee on Un-American Activities. You invoked the Fifth Amendment of the Federal Constitution as the basis of your refusal.

It is my considered professional opinion that your refusal to answer these questions go to the essence of your professional fitness to be a teacher and makes you incompetent to teach in the Philadelphia Public Schools.

You failed in your civic responsibility of aiding the Superintendent of Schools in his effort to determine professional fitness to teach in our schools. It is my duty to separate from the teaching system any employe who is professionally unfit. Your conduct prevented me from carrying out my administrative duties.

You failed in your duty to cooperate with a properly constituted Sub-Committee of the House of Representatives of the United States of America. Instead of performing your duty toward this Sub-Committee as every citizen should have done in similar circumstances, you invoked the Fifth Amendment as the basis of your refusal to cooperate.

Your conduct violates the school laws of this Commonwealth. I therefore conclude that you are guilty of wilful and persistent violation of the school laws.

I shall present this matter to the Board of Public Education with the request that steps be taken to dismiss you under Section 1122 of the Public School Code of 1949.

Sincerely yours, Superintendent of Schools

(74a)

Beilan's Exhibit No. 1.

(Two rating cards of Herman Beilan.)

LAST NAME: Beilan — FIRST NAME: Herman — [redacted]: Albert

DAY NO. DAY YEAR	PRESENT POSITION: GRADE, SUBJECT, OR POSITION	PRESENT POSITION: SCHOOL	PRESENT POSITION: DIST.	RATED FOR	NUMERICAL RATING: INS.	MAR.	COOP	TOTAL	RATED BY	OFFICIAL POSITION
6-26-30	2nd Cert	Crispin	10	Per Cert.				S	S. N. Lowry	Pr
1-30-31	"	"	10	"				S	S. N. Lowry	Pr
6-26-31	"	"	10	Cl. B.				G	S. N. Lowry	Pr
1-30-32	"	"	10	"				G	S. N. Lowry	Pr
	"	"	10	"				G	S. N. Lowry	Pr
	"	"	10	"				G	S. N. Lowry	"
	"	"	10	"				G	S. N. Lowry	"
1	"	Ferguson	7	B 1				G	Leave	
6/26	"	"	7	B 1				G	" " "	
1/31	"	"	7	B 1				G	" " "	
6/26/33	"	"	7	B 1				G	" " "	

FORM B E [illegible] OF TEACHERS. CUMULATIVE RECORD—SCHOOL DISTRICT OF PHILADELPHIA. (OVER)

[redacted]

FIRST NAME: Berlan — MIDDLE NAME: Herman Albert

DAY MO. DAY YEAR	PRESENT POSITION: GRADE, SUBJECT, OR POSITION	SCHOOL	DIST.	RATED FOR	NUMERICAL RATING: INS.	MAN.	COOP	TOTAL	RATED BY	OFFICIAL POSITION
1/31/36	8 B	Ferguson	7	B 1 (March 1937)				G	F A W	SP.
6/26/36	8 A	"	7	B 1				E	F A W	"
1/31/37	8 A	"	7	B 1				G	F A W	
6/26/37	" "	"	7	B 1				G	F A W	
1/31/38	" "	"	7					S	- - -	
6/24/38	"	"	7					S	" "	
1/31/39	" "	"	5			25	18	S	" "	
6/11/40	6 B	"	5					S	" "	SP.
1/31/41	8 B	"	5	Sab Leave				S	- - -	
6/26/41	6 B	"	5	"	"			S	- - -	
1/31/42	7 A	"	5					S		

FORM S E H 208—RATING OF TEACHERS, CUMULATIVE RECORD—SCHOOL DISTRICT OF PHILADELPHIA (OVER)

LAST NAME: Berlan | FIRST NAME: Herman | MIDDLE NAME: Albert

DAY MO. DAY YEAR	PRESENT POSITION GRADE SUBJECT OR POSITION	SCHOOL	DIST	RATE	SALARY	MAKE UP	REMARKS	OFFICIAL POSITION
6/24/42	7a	Ferguson	5					
6/24/42	7A	Ferguson	5	Transf	38 22 12	92		
9/2/43	7B	Blaine	4			5		
9/16/43	7a	"	4			5		
1/31/44	8B	"	4			5		
9/29/44	8a	"	4			5		
2/[illegible]/45	[illegible]	[illegible]	4					
2/23/45	[illegible]	[illegible]	4					
9/21/45			4	P.A		5		
6/26/46			4	P.A				
[illegible]					4025155			

H 208 RATING OF TEACHERS CUMULATIVE RECORD—SCHOOL DISTRICT OF PHILADELPHIA (OVER)

LAST NAME: KEILAN, FIRST NAME: HERMAN, INITIAL: ALBE[illegible]

DAY	PRESENT POSITION: GRADE SUBJECT OR POSITION	SCHOOL	SET	RATED FOR	NUMERICAL RATING: INS	SUB	COOP	TOTAL	RATING
9/30/49	Aux. Teacher	Gt. N. Mus	6	TRANS	35	231		75	Satisfactory
6-49	Gratis	Evening	4					S	S (Verified)
6-49			4					S	S
6-50			4					S	S
6-51			4					S	S (Verified)
6-52			4					S	S (Verified)
6-53			4					S	S (Verified)
11-30-53			4	Supervisor	42	34	17	80	Satisfactory

FORM S E N 208 — RATING OF TEACHERS CUMULATIVE RECORD — SCHOOL DISTRICT OF PHILADELPHIA (OVER)

RESOLUTION OF THE BOARD OF PUBLIC EDUCATION DATED JANUARY 7, 1954.

I hereby certify that the following is a true and correct copy of a resolution adopted by The Board of Public Education at a special meeting held on January 7, 1954:

Mr. Obermayer submitted the following:

WHEREAS, The Board of Public Education on November 25, 1953 preferred charges against Herman Beilan of incompetency and persistent and wilful violation of the school laws of this Commonwealth in violation of the Act of March 10, 1949, P. L. 30, as amended, based on the written charges of the Superintendent of Schools; and

WHEREAS, The Board of Public Education conducted a hearing at which Mr. Beilan was represented by counsel, and

WHEREAS, The Board of Public Education has given full, impartial and unbiased consideration thereof:

I therefore move that the charges against the said Herman Beilan have been sustained and that the said Herman Beilan be discharged as a professional employe.

On the adoption of the motion the yeas and nays were called and were as follows:

Yeas: Mr. Downs, Mr. FitzPatrick, Miss Golden, Mr. Greenberg, Mr. LaBrum, Mrs. Lewis, Mr. Loesch, Dr. Lucchesi, Mr. McDonough, Mr. Obermayer, Dr. Pollock, Mr. Swenson, Dr. Turner, Mr. Weinrott—14.

Nays: Mr. Saul, President—1.

The motion contained in the report was adopted. From the official minutes of The Board of Public Education.

ADD B. ANDERSON,
Secretary.

(Seal)

OPINION NO. 91 OF SUPERINTENDENT OF PUBLIC INSTRUCTION, COMMONWEALTH OF PENNSYLVANIA, AS TO BEILAN.

Herman A. Beilan has appealed his dismissal from employment as a professional employe in the School District of the City of Philadelphia. In accordance with Section 1122 of the Public School Code of 1949, the Act of March 10, 1949, P. L. 30, the Board of Public Education of Philadelphia charged Mr. Beilan with incompetency and persistent and wilful violation of the school laws of the Commonwealth.

On June 25, 1952, during a personal interview with the appellant, Dr. Louis P. Hoyer, Superintendent, School District of the City of Philadelphia, informed appellant that he wished to ask him certain questions having an important bearing on his loyalty. At that time, Doctor Hoyer also asked appellant whether he was press director of the professional section of the Communist Political Association. Appellant informed Doctor Hoyer that he wanted the advice of counsel and would call Doctor Hoyer to arrange for a further appointment.

On October 14, 1952, at a second interview with Doctor Hoyer, appellant stated that he had obtained the advice of counsel, who said that appellant "would not legally be asked questions about political and religious beliefs and that there was no legal basis for asking these questions."

On November 18, 1953, appellant refused to answer questions as to his affiliations when asked by the sub-committee of the House Committee on Un-American Activities, and invoked the Fifth Amendment to the Federal Constitution as the basis for his refusal.

The questions raised in this appeal are identical to those considered by us in the case of Solomon Haas, also a professional employe of The School District of the City of Philadelphia (Opinion No. 90 of the Superintendent of Public Instruction, dated November 18, 1954), wherein we sustained the action of the Board and dismissed the appeal. It would serve no useful purpose here to repeat our reasons.

For the reasons specified in our Opinion in the case of Solomon Haas, we hold that the action of the Board of Public Education of the School District of the City of Philadelphia in dismissing Herman A. Beilan, the appellant, was proper.

This appeal is therefore dismissed and the following order entered.

Findings of Fact.

1. Appellant is a professional employe in the School District of the City of Philadelphia.

2. Appellant on June 25, 1952, was called for a personal interview by Dr. Louis P. Hoyer, Superintendent of Schools, and informed that Doctor Hoyer wished to ask him some questions having an important bearing on his loyalty. At that time, appellant stated that he refused to answer the questions and wished to seek the advice of legal counsel.

3. On October 14, 1952, appellant was again called before Doctor Hoyer for questioning and stated that he had obtained the advice of counsel, who said that appellant "would not legally be asked questions about political and religious beliefs and that there was no legal basis for asking these questions."

4. On November 18, 1953, appellant was called before the sub-committee of the House of Representa-

tives of the Congress of the United States Investigating Un-American Activities, and asked certain questions dealing with his loyalty to the Government of the United States. Appellant refused to answer these questions, invoking the Fifth Amendment to the Federal Constitution as the basis of his refusal.

5. On November 20, 1953, appellant was rated "unsatisfactory" as a professional employe, by Dr. Louis P. Hoyer, Superintendent of Schools of Philadelphia.

6. On November 23, 1953, Dr. Louis P. Hoyer, Superintendent of Schools of Philadelphia, sent appellant a detailed letter informing him that he was rated "unsatisfactory" as a result of his refusal to answer questions presented by him and by the subcommittee of the House of Representatives of the Congress of the United States Investigating Un-American Activities.

7. On November 25, 1953, the Board of Public Education preferred charges against the appellant on the grounds of incompetency and persistent and wilful violation of the School Laws of this Commonwealth, and after sending him a statement of charges, conducted a hearing in the matter on December 22, 1953.

8. As a result of such hearing the Board of Public Education determined on January 7, 1954, that the appellant be dismissed.

9. From the action of the Board of Public Education an appeal was filed with the Superintendent of Public Instruction on January 20, 1954.

10. No additional testimony was taken before the Superintendent of Public Instruction.

CONCLUSIONS OF LAW.

1. The notice given to appellant of his unsatisfactory rating was a sufficient compliance with the law.

2. Neither Section 1123 nor Section 1125 of the Public School Code of 1949, as amended, dealing with the matter of rating professional employes, requires that a copy of the actual rating card used in the rating of a professional employe, be forwarded to the professional employe when the rating is made. The official rating card of the Department of Public Instruction is but a guide in determining the rating of a professional employe. The forwarding of a detailed written statement of the unsatisfactory rating was a sufficient compliance with the law.

3. The rating of professional employes, which is the right, the discretion and the duty of superintendents of schools, is not limited to classroom performance.

4. A superintendent of schools is within his legal authority in asking proper questions of professional employes in the employ of his district, which questions relate to the fitness of such employes to continue to serve as teachers in the employ of the school district.

5. The "Pennsylvania Loyalty Act," the Act of December 22, 1951, P. L. 1726, in no way insulates a professional employe from being asked questions as to his loyalty, and said Act is not involved in the present proceeding.

6. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such employe refuses to answer proper questions re-

lating to his loyalty asked of him by the superintendent of schools.

7. The refusal to answer, referred to in conclusion No. 6 herein, constitutes "incompetency."

8. The refusal to answer, referred to in conclusion No. 6 herein, constitutes "persistent and wilful violation of the school laws of this Commonwealth."

9. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such professional employe refuses to answer questions put to him by a sub-committee of the House of Representatives of the Congress of the United States and invokes the Fifth Amendment to the Federal Constitution on the ground that truthful answers thereto would tend to incriminate him.

ADJUDICATION AND ORDER AS TO BEILAN.

And now, this twenty-second day of December, 1954, after hearing and argument and after reviewing all the testimony filed or taken in the hearing, the appeal of Herman A. Beilan from a decision of the Board of Public Education of the School District of the City of Philadelphia, Pennsylvania, alleging that the Board of Public Education improperly dismissed him as a professional employe, is hereby dismissed and the action of the Board of Public Education is affirmed.

By Francis B. Haas,
Superintendent of Public Instruction.

OPINION NO. 90 OF SUPERINTENDANT OF PUBLIC INSTRUCTION, COMMONWEALTH OF PENNSYLVANIA, AS TO HAAS.

November 18, 1954

Solomon Haas has appealed his dismssal from employment as a professional employe in the City of Philadelphia. In accordance with Section 1122 of the Public School Code of 1949, the Act of March 10, 1949, P. L. 30, the Board of Public Education of Philadelphia (hereinafter called the Board), charged Haas with incompetency and persistent and wilful violation of the school laws of the Commonwealth.

The record reveals that on June 26, 1952, appellant, during an interview with Dr. Louis P. Hoyer, Superintendent of Schools, refused to answer certain questions as to his loyalty. Haas stated that he wished to consult counsel. At a second meeting on October 14, 1952, appellant, having consulted counsel, again refused to answer questions relating to loyalty. He had taken the Loyalty Oath,[1] and his position was that this oath "took care of everything before that time." Appellant further stated that "he did not propose to have here what happened in Germany."

Thereafter, in November, 1953, a sub-committee of the House Committee on Un-American Activities met in Philadelphia for the purpose of investigating communist activities in that city. Appellant, in response to a subpoena, appeared before the sub-committee on November 18, 1953. He stated that at that time he was not a member of the Communist Party. However, when asked whether he had ever been a member, he refused to answer on the ground of the

1. The Act of December 22, 1951, P. L. 1726, 65 P. S. Section 211 et seq.

Fifth Amendment to the Constitution of the United States. The appellant was asked other questions by counsel for the sub-committee, relating to membership in the party and various communist front organizations, as well as attendance at meetings and picket lines. In each instance, Haas invoked the Fifth Amendment.

On the basis of Haas' refusal to answer questions relating to loyalty asked by Dr. Hoyer on June 26, 1952 and October 14, 1952, and his refusal to answer questions dealing with loyalty before the sub-committee upon recommendation by Dr. Hoyer, the Board, on November 25, 1953, preferred the charges against Haas to which reference has heretofore been made. Appellant received a statement of the charges, and on December 19, 1953, he was given a hearing before the Board. Thereafter, the Board found that the charges had been proved and, on January 7, 1954, Solomon Haas was dismissed. This appeal followed.

The important question presented for our determination is whether appellant's refusals, on the three occasions mentioned, to answer questions relating to loyalty, constitute incompetency and persistent and wilful violation of the school laws. This, of course, involves a consideration of the authority of Dr. Hoyer to ask the questions, and the effect of invoking the Fifth Amendment before a sub-committee of the Congress of the United States.

It was settled in Pennsylvania by the case of ALBERT APPEAL, 372 Pa. 13 (1952), that a communist or any person who advocates or participates in subversive doctrines cannot teach in the public school system. Mr. Chief Justice Stern, speaking for the Supreme Court, there said, at page 19:

> ". . . In short, it is essential, in order to protect our children from treacherous influences,

> that persons who advocate or participate in subversive doctrines should not be employed, or if employed should not be retained, as teachers in our public schools, and any teacher dismissed for such a reason cannot properly claim that any constitutional or legal right is thereby violated."

See also, the Act of December 21, 1951, P. L. 1712, 18 P. S. Section 3811.

To carry out the mandate of Article 10, Section 1 of the Pennsylvania Constitution that there be maintained a "thorough and efficient system of public schools," the appointment of superintendents is provided for in the public school system. The duties of such individuals include the determination of the fitness of the professional employes. See Section 1123 of the Public School Code of 1949, as amended by the Act of August 10, 1951, P. L. 1157, Section 1, 24 P. S. Section 11-1123 (P. P.).

As soon as Dr. Hoyer, as District Superintendent, came into possession of information concerning the loyalty of appellant, it was in our judgment his right, indeed, his solemn duty to inquire of appellant as to the truth or falsity of this information. Because of the important nature of this information, Dr. Hoyer chose to make the necessary inquiry himself. If appellant had cooperated and it was determined the information was false, it would then have been Dr. Hoyer's duty to protect this teacher from false accusation. Appellant, however, refused to cooperate and instead became insubordinate in that "he did not propose to have here what happened in Germany."

The fact that appellant took the Loyalty Oath in no way insulates him from inquiry relative to past conduct. Dr. Hoyer apparrently possessed information relating to past subversive activity or association

with subversive organizations by appellant. Assuming that such information was true, and assuming further that appellant's participation in subversive activities continued at least until the day of the oath, it is obvious that the inquiry as to past activity and association is relevant to determine if the activity or association has stopped and, if so, when and under what circumstances.

The Supreme Court of the United States, in a similar situation, has said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. . . ." (Garner v. Board of Public Works of Los Angeles, 341 U. S. 716 (1951))

It has been held repeatedly that the term "incompetency," as used in the Public School Code, is not limited to classroom performance alone: HOROSKO v. MT. PLEASANT TWP. SCHOOL DISTRICT et al., 335 Pa. 369; BROWN'S CASE, 151 Pa. Superior Ct. 522; and WEST MAHANOY TWP. SCHOOL DIST. v. KELLY, 156 Pa. Superior Ct. 601.

It is our opinion that the settled contempt of Solomon Haas for the authority of the Superintendent of Schools seriously reflects upon his qualifications as a teacher. We fully agree with the sentiments of Dr. Hoyer contained in the testimony before the Board of Public Education as a reason for the unsatisfactory rating given to Haas:

"The question of competency of a teacher has many implications. Of course, there is the question of his technical skill in handling the work in the classroom. But there are a great many other matters that have to deal with personality, character, that are as important in some respects, I think even more important, than technical skill on the part of a teacher.

'I felt that in this instance Mr. Haas did not show the frankness, the candor, the kind of intellectual honesty that I think a teacher is bound to show in connection with his work. This was true on both occasions when he came into my office.

"The influence of a teacher in the classroom is perhaps greatest through the force of his example, through the kind of person that he appears to the children to be. And when we are dealing in an area that is as extensive as the area of a classroom, these matters assume tremendous importance. I therefore feel that a teacher who cannot deal with his professional superior on a basis of candor and frankness has a very serious defect in his qualifications as a teacher and I, therefore, consider him incompetent to be a teacher."

Since the questions which Dr. Hoyer desired to ask appellant related to his loyalty, his position is in accord with that adopted by the Supreme Court of the United States in the case of ADLER v. BOARD OF EDUCATION OF THE CITY OF NEW YORK, 342 U. S. 485, wherein it was said at page 493:

". . . A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It

must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate."

Under the circumstances, we find that Haas' conduct before the Superintendent on two occasions constitutes incompetency within the meaning of the Public School Code. Cf., AMBRIDGE BOROUGH SCHOOL DISTRICT v. SNYDER, 346 Pa. 103; and GANAPOSKI'S CASE, 332 Pa. 103.

Appellant has raised the question whether he was given notice of the unsatisfactory rating in compliance with the Tenure Law, in that he did not receive a copy of the rating card.

We interpret Sections 1123 and 1125 of Public School Code of 1949 to require only that a copy of the rating or results of the computation be sent to the employe. A copy of the rating card need not be forwarded to the employe. In this particular case, the detailed letter which Dr. Hoyer sent to the employe, setting forth his reasons for the unsatisfactory rating, was much more informative than would have been a copy of the rating card itself. Since the purpose of

the law is obviously to inform the teacher that an unsatisfactory rating has been placed on record against him, the Board of Public Education, in this case, has complied with the rating procedure prescribed by the Code. See MULHOLLEN APPEAL, 155 Pa. Superior Ct. 587.

We also sustain the finding of the Board of Public Education that Haas' conduct constituted persistent and wilful violation of the school laws of the Commonwealth. Appellant clearly indicated that under no circumstances would he answer the questions put to him by Dr. Hoyer either then, or at any future time. Since we firmly believe that the school laws imposed a duty upon appellant to answer these questions, it follows that his repeated refusal to do so constitutes persistent and wilful violation.

Even if the interviews with Dr. Hoyer had never taken place; we believe another and most compelling reason exists for sustaining the dismissal of this employe—his refusal to answer questions propounded by a duly constituted sub-committee of the Congress of the United States.

The astonishing argument is made in appellant's brief that he "by his own violation did not flaunt his conduct before the public." The committee is blamed for appellant's plight in that it called for his testimony in public session and thus caused appellant to refuse to answer. Such an argument is preposterous. The simple facts are that appellant was asked by a lawful body, questions based upon sworn testimony which, if true, seriously reflect upon appellant's responsibilities, not only as a teacher but as a citizen. Appellant refused to answer these questions because a truthful answer thereto might tend to incriminate him. At the hearing before the Board he reaffirmed this position.

No one disputes appellant's right under the United States Constitution to invoke the Fifth Amendment and refuse to testify as to possible communistic affiliations. However, when a public school teacher pulls down this cloak of immunity, in our judgment his employer would be most remiss in his obligation to American children and their parents if he did not at once remove such teacher from the classroom. We are not swayed by arguments that no sanction should attach to the teacher who so deports himself. By all the concepts of logic and reason the teacher admits that he has done something for which he might be prosecuted criminally. We repeat, this appellant admitted at the hearing before the Board that a truthful answer to the committee's question would incriminate him.[2]

It is fundamental that while a person has a constitutional right to refuse to testify, such person does not have a right to public employment as a school teacher, policeman or in any other capacity. An exercise of the right may protect a person from criminal prosecution, but it does not prevent the revocation of a privilege by the State in the exercise of its police power to protect the schools from pollution and thereby to defend its own existence: ADLER v. BOARD OF EDUCATION OF THE CITY OF NEW YORK, supra.

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2. "MR. RHOADS: Would the stenographer repeat that question. I want no equivocation from you on that, Mr. Haas.

"(The question was repeated by the stenographer as follows: And did you, when you took the benefit of the Fifth Amendment on November 18, 1953, before the House Un-American Activities Committee in Philadelphia, believe that if you answered truthfully the questions which were presented to you by that Committee, that your answers would incriminate you?)

"THE WITNESS: The answer is yes. However, I should like to add the following: First, here is a very serious question of the use of the First Amendment, even though I used the Fifth Amendment. There is the right to free association. I don't recall exactly what the amendment is pertaining to the ability to read different types of material so as to make up and formulate a broad picture of a situation which is necessary as a teacher. I believe it is the First Amendment. . . ." (N.T. 82)

The courts have frequently considered the question of the relationship of the Fifth Amendment to public employment. Justice Holmes once said on this point:

> ". . . The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. . . ." (McAuliffe v. Mayor of the City of New Bedford, 155 Mass. 216, 29 N. E. 517-518).

In SCHOLL v. BELL, 125 Ky. 750, 102 S. W. 248, 261-262, the following very pertinent observations are made:

> "The testimony shows many outrages and crimes done by the police, and yet, when these men were placed on the witness stand and interrogated as to what they knew, they invariably sheltered under the law forbidding self-incrimination; and, when the question as to whether the witness should or should not be compelled to answer was certified to the chancellors, the witnesses were always protected by the ruling. Assuming the ruling to be correct, the conclusion which seems to have been drawn as to the innocence of the officers is not justified. The principle under discussion is a rule of evidence, to protect the witness from criminal prosecution or public exposure to shame because of his own testimony. It is a rule of necessity, beyond which it should not be extended. Its use should not be considered as affording the witness a certificate of good character. Here were police officers being interrogated as to existence of crimes

they were paid to prevent, if possible; if not, to expose and punish afterwards, and yet they one and all refused to answer 'under adviceof counsel.' Suppose a secret murder had been committed, and the police on that beat, when asked about it, should say, 'I decline to answer for fear of incriminating myself.' This, under the rule invoked, would protect the witness from answering; but how long would it justify his retention on the roll of the police? What would be thought of those who left the public safety in his hands longer than it would require to discharge him? Suppose a bank had been robbed, and the bookkeeper, the teller, and cashier, when interrogated, should say, 'I decline to answer under advice of counsel.' What would be thought of a board of directors who would afterwards leave the bank in the hands of such men? This is precisely the situation here. Peace officers, whose duty it was to prevent and expose crime, when called on to do so, sheltered under the rule against self-incrimination; and yet these men still wear the official uniform, still draw salaries from the public purse, and this is made possible only by the consent of those who are the apparent beneficiaries of their silence.''

The same general proposition of the failure of a public-employe to answer questions was considered by the Supreme Court of Pennsylvania, as it applies to policemen, in the case of SOUDER v. PHILADELPHIA et al., 305 Pa. 1, 156 Atl. 245, wherein a policeman had failed to answer questions. The Court there said at page 6:

''. . . It was essential in the proper discharge of his duties that he should comport himself as an officer in such manner that no act of wrongdoing should attach itself to him, to the end

that those who served under him should feel for him that respect which insures confidence and obedience. As such an officer in such a station he should have been keen to see that no taint of evil doing attached itself to him and when charges were made, reflecting upon his honesty and integrity, that they were met with denial and answering proofs of no delinquencies. He should have held himself above suspicion. Instead of so doing, when charges of the gravest nature were brought against him by the grand inquest of the county, he answered before them in a way not to establish his freedom from wrong by full explanation, but in a manner calculated to confirm his complicity in crime, and, when summoned by his superior on specific charges before the tribunal charged by the law with the duty of inquiring into them, he answered not at all. This in itself was conduct unbecoming an officer."

In a very recent case, FAXON v. SCHOOL COMMITTEE OF BOSTON, 120 N. E. 2d 772, the Supreme Court of Massachusetts sustained the dismissal of a teacher upon grounds identical with those here presented. It was there said at page 774:

". . . We do not believe that dismissal of a teacher for pleading self incrimination before a Senate committee when asked about affiliation with the Communist Party can be held by the courts to be arbitrary, irrational, unreasonable, or irrelevant to the task of the school committee. The responsibility for determining grounds for dismissal rests primarily with the school committee and not with the court. Refusal to testify does not prove guilt and no inference of guilt can be drawn from it in a criminal case. In re Opinion of the Justices,

300 Mass. 620, 15 N. E. 2d 662. But the question here is not one of guilt or innocence. **It is a question of administration by a public board in the public interest.** Neither the school committee nor the court exists in a vacuum. Neither can profess ignorance of the currents of opinion which sway great masses of the people. It cannot be doubted that multitudes of people in this community regard with abhorrence the Communist Party and communism as that term is generally understood. It is not for this court to say why this is so or whether this feeling has gone too far or not far enough. It is sufficient for us that the feeling exists. Nothing the court can do or say will prevent the public from drawing its own inferences from refusals to testify. It is apparent that a school teacher has extensive and peculiar opportunity to impress his attitude and views upon pupils in his charge. It was the petitioner's statutory duty to impress upon them 'love of their country.'[3] . . . Yet some of the questions which the petitioner declined to answer bore directly upon the recruiting of students for communism. The school committee could find that a great many parents and others would be seriously disturbed if the petitioner were allowed to continue teaching, and that this would undermine public confidence and react unfavorably upon the school system. Considering the position of the petitioner entirely apart from any question of fault on his part and as if he had merely suffered some misfortune, such as a terribly disfiguring personal injury, **the best interests of the schools are paramount, and we cannot say that the school committee exceeded its powers.**" (Emphasis supplied.)

3. Cf., Sections 1511 and 1515 of the Public School Code of 1949, 24 P. S. Sections 15-1511 and 15-1515.

Much has been written concerning the lack of civic responsibility on the part of a teacher who invokes the Fifth Amendment. See Hook, "The Fifth Amendment —A Moral Issue," New York Times Magazine, November 1, 1953; Reutter, "The School Administrator and Subversive Activities," Columbia University, New York, 1951, but we will confine our comments by quoting from the case of INTILLE v. HOYER, 88 D. & C. 512 (Philadelphia County), which involved a teacher who was suspended for the same reasons as appellant. The court there said at pages 513-515:

> "Plaintiff was suspended on the ground that she had shown a lack of fitness to be a teacher in displaying conduct unbecoming her professional status in that she had failed to answer questions which in good conscience she should have been willing to answer candidly as to any affiliation with subversive organizations.
>
> "Since this ground is not enumerated in the section of the statute set forth above, plaintiff concludes that the suspension is improper and therefore merits the intervention of this court.
>
> "But the act does not lend itself to the tortured construction advanced by plaintiff. Because a teacher passes certain qualifying grades, she is not automatically so secure in her position that if she commits some act detrimental to society or to the children placed in her charge, the superintendent of schools is powerless to dismiss the teacher pending a final hearing by the board of education.
>
> * * *
>
> "Certainly the refusal of plaintiff to answer questions of a duly constituted committee of our Congress is a dreadful example for a teacher to set

for her pupils. Whether plaintiff is a subversive or not, such wretched conduct before a committee of the highest legislative branch of our Republic, can only foster in the impressionable children under her tutelage, a settled contempt and arrogance for our country and its lawmakers."

Appellant's conduct before the sub-committee of the House of Representatives of the Congress of the United States Investigating Un-American Activities, fully justifies the finding of incompetency by the Board of Public Education.

For the foregoing reasons we hold that the action of the Board of Public Education of the School District of the City of Philadelphia, in dismissing appellant was proper. This appeal is therefore dismissed and the following order entered.

FINDINGS OF FACT.

1. Appellant is a professional employe in the School District of the City of Philadelphia.

2. Appellant on June 26, 1952, was called for a personal interview by Dr. Louis P. Hoyer, Superintendent of Schools, and informed that Doctor Hoyer wished to ask him some questions having an important bearing on his loyalty. At that time, appellant stated that he refused to answer the questions and wished to seek the advice of legal counsel.

3. On October 14, 1952, appellant was again called before Doctor Hoyer for questioning and stated that upon advice of legal counsel he refused to answer Doctor Hoyer's questions.

4. On November 18, 1953, appellant was called before the sub-committee of the House of Representatives of the Congress of the United States Investigat-

ing Un-American Activities, and asked certain questions dealing with his loyalty to the Government of the United States. Appellant refused to answer these questions, invoking the Fifth Amendment to the Federal Constitution as the basis of his refusal.

5. On November 20, 1953, appellant was rated "unsatisfactory" as a professional employe, by Dr. Louis P. Hoyer, Superintendent of Schools of Philadelphia.

6. On November 24, 1953, Dr. Louis P. Hoyer, Superintendent of Schools of Philadelphia, sent appellant a detailed letter informing him that he was rated "unsatisfactory" as a result of his refusal to answer questions presented by him and by the sub-committee of the House of Representatives of the Congress of the United States Investigating Un-American Activities.

7. On November 25, 1953, the Board of Public Education preferred charges against the appellant on the grounds of incompetency and persistent and wilful violation of the School Laws of this Commonwealth, and after sending him a statement of charges, conducted a hearing in the matter on December 19, 1953.

8. As a result of such hearing the Board of Public Education determined on January 7, 1954, that the appellant be dismissed.

9. From the action of the Board of Public Education an appeal was filed with the Superintendent of Public Instruction on February 4, 1954.

10. No additional testimony was taken before the Superintendent of Public Instruction.

CONCLUSIONS OF LAW.

1. The notice given to appellant of his unsatisfactory rating was a sufficient compliance with the law.

2. Neither Section 1123 nor Section 1125 of the Public School Code of 1949, as amended, dealing with the matter of rating professional employes, requires that a copy of the actual rating card used in the rating of a professional employe, be forwarded to the professional employe when the rating is made. The official rating card of the Department of Public Instruction is but a guide in determining the rating of a professional employe. The forwarding of a detailed written statement of the unsatisfactory rating was a sufficient compliance with the law.

3. The rating of professional employes, which is the right, the discretion and the duty of superintendents of schools, is not limited to classroom performance.

4. A superintendent of schools is within his legal authority in asking proper questions of professional employes in the employ of his district, which questions relate to the fitness of such employes to continue to serve as teachers in the employ of the school district.

5. The "Pennsylvania Loyalty Act," the Act of December 22, 1951; P. L. 1726, in no way insulates a professional employe from being asked questions as to his loyalty, and said Act is not involved in the present proceeding.

6. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such employe refuses to answer proper questions relating to his loyalty asked of him by the superintendent of schools.

7. The refusal to answer referred to in conclusion No. 6 herein, constitutes "incompetency."

8. The refusal to answer referred to in conclusion No. 6 herein, constitutes "persistent and wilful violation of the school laws of this Commonwealth."

9. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such professional employe refuses to answer questions put to him by a sub-committee of the House of Representatives of the Congress of the United States and invokes the Fifth Amendment to the Federal Constitution on the ground that truthful answers thereto would tend to incriminate him.

ADJUDICATION AND ORDER AS TO HAAS.

And now, this eighteenth day of November, 1954, after hearing and argument and after reviewing all the testimony filed or taken in the hearing, the appeal of Solomon Haas from a decision of the Board of Public Education of the School District of the City of Philadelphia, Pennsylvania, alleging that the Board of Public Education improperly dismissed him as a professional employe, is hereby dismissed and the action of the Board of Public Education is affirmed.

By Francis B. Haas,
Superintendent of Public Instruction.

APPEAL TO COURT OF COMMON PLEAS.

HERMAN A. BEILAN appeals from the adjudication of the Superintendent of Public Instruction, made on the 22nd day of December, 1954, affirming Appellant's dismissal by the Board of Public Education of the School District of Philadelphia, dated January 7, 1954. This appeal is taken pursuant to Section 1132 of the Public School Code of 1949 as amended by the Act of 1951, Sept. 26, P. L. 1448, Sec. 1.

JOHN ROGERS CARROLL,
Attorney for Appellant.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } *ss.:*

HERMAN A. BEILAN, being duly sworn, deposes and says that this appeal is not taken for the purpose of delay, but because Appellant believes he has suffered injustice by the adjudication appealed from.

HERMAN A. BEILAN.

Sworn to and subscribed before me this day of January, 1955.

MARTHA A. BAU,
Notary Public.

APPELLANT'S EXCEPTIONS TO ADJUDICATION OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

And Now, this 13th day of January, 1955, Herman A. Beilan by his attorney, John Rogers Carroll, excepts to the adjudication of the Superintendent of Public Instruction in the above-entitled matter as follows:

1. The adjudication is erroneous in holding that, as a matter of fact the appellant refused to answer any question asked by the Superintendent of Schools.

2. The adjudication is erroneous in holding that, without a charge alleging a refusal to answer questions asked by the Superintendent of Schools, appellant could be dismissed for such a refusal.

3. The adjudication is erroneous in holding that a refusal to answer questions pertaining to religious or political beliefs provides any ground for the dismissal of a professional employee.

4. The adjudication is erroneous in holding that a Superintendent of Schools has the right to compel answers to questions relating to the loyalty of a professional employee to the government of the United States on pain of dismissal.

5. The adjudication is erroneous in holding that the Act of December 22, 1951, P. L. 1726 (The Pennsylvania Loyalty Act) is not the exclusive method of inquiry into the loyalty of professional employees of a School District.

6. The adjudication is erroneous in holding that a refusal to answer questions relating to appellant's alleged membership in the Communist Party of the

United States at a time prior to the enactment of the Act of December 22, 1951, P. L. 1726, is either conclusive proof or some evidence of "incompetency" as that term is defined in § 1123 of the School Code (as amended by the Act of 1951, August 10, P. L. 1157 §1).

7. The adjudication is erroneous in holding that a refusal to answer questions relating to appellant's alleged membership in the Communist Party of the United States at a time prior to the enactment of the Act of December 22, 1951, P. L. 1726 is either, in itself, a violation of the school laws of the Commonwealth of Pennsylvania or is some evidence of such violation.

8. The adjudication is erroneous in holding that a professional employee of a School District may be dismissed upon a charge which simply alleges "violation of the school laws", without specification or particularization of any provision of the School Laws or any regulation pursuant thereto. Such holding violates, not only the School Laws themselves, but also the Due Process provision of Article I, § 9 of the Constitution of the Commonwealth and the Due Process provision of the 14th Amendment to the Constitution of the United States.

9. The adjudication is erroneous in holding that there is any evidence in this record of incompetency on the part of the appellant.

10. The adjudication is erroneous in holding that a Superintendent of Schools has the power, simply by asking a question of a professional employee which question pertains to his competency, to place upon the said employee the burden of disproving a charge of incompetency at a subsequent hearing before the Board of Education.

11. The adjudication is erroneous in holding that an action of a professional employee, occurring in an

academic year for which, after the action has been brought to the attention of the Superintendent of Schools, the professional employee was rated "satisfactory" on the rating cards approved by the School District of Philadelphia and the Department of Education of the Commonwealth by the said Superintendent, may, in a subsequent academic year, be used as a basis for dismissal of the said employee, either upon the ground of incompetency or that of wilful and persistent violation of the School Laws of the Commonwealth.

12. The adjudication is erroneous in holding that a single refusal to answer a single question asked by the Superintendent of Schools can amount to "wilful and persistent violation of the school laws".

13. The adjudication is erroneous in holding that a refusal to answer questions asked by the Superintendent of Schools relating to a past association of a professional employee, which association, if it existed, was lawful at that time under both the laws of the Commonwealth and of the United States. Such holding violates not only the School Laws but also the Due Process provisions of Article I, § 9 of the Constitution of the Commonwealth and of the Fourteenth Amendment to the Constitution of the United States, as well as Article I, § 4 of the Penna. Constitution.

14. The adjudication is erroneous in holding that, without specific and clearly defined authority in the statutes of the Commonwealth or valid regulations issued pursuant thereto, a professional employee of a School District may be dismissed for refusal to answer questions of the Superintendent of Schools relation to his associations or beliefs, past or present. Such holding violates the School Code of the Commonwealth, the Due Process provision of Article I, § 9 of

the Constitution of the Commonwealth and the Due Process provision of the Fourteenth Amendment to the Constitution of the United States, as well as Article I, § 4 of the Constitution of the Commonwealth.

15. The adjudication is erroneous in holding that a refusal to answer questions of a committee of the House of Representatives of the United States upon the ground of possible self-incrimination under the Fifth Amendment to the Constitution of the United States is incompetency as defined in § 1123 of the School Code of 1949 as amended, *op. cit.*, or evidence thereof. Such holding violates the School Code of the Commonwealth and the Due Process provisions of Article I, § 9 of the Constitution of the Commonwealth and the Fourteenth Amendment of the Constitution of the United States as well as the supremacy clause of Article 6, cl. 2 of the Constitution of the United States.

16. The adjudication is erroneous in holding that a proper invocation of rights granted by the Constitution of the United States is a "persistent and wilful violation of the school laws of the Commonwealth".

17. The adjudication is erroneous in holding that there is in this record, any evidence of any violation of the school laws of the Commonwealth, wilful, persistent, or otherwise.

18. The adjudication is erroneous in holding that a state has the right, consistent with the Due Process provision of the Fourteenth Amendment to the Constitution of the United States and the equal protection clause thereof to impose a penalty upon a citizen's exercise of a right granted by the Fifth Amendment to the Constitution of the United States by depriving the said citizens of public employment and the right thereto.

19. The adjudication is erroneous in holding that the use of the Fifth Amendment privilege not to be a witness against oneself is evidence of guilt of the crime which may be suggested by the question one refuses to answer. Such holding violates the due process provision of Article I, § 9 of the Constitution of the Commonwealth, the Due Process provision of the Fourteenth Amendment to the Constitution of the United States, the Equal Protection clause thereof, and the supremacy clause of the second clause of Article 6 of the Constitution of the United States.

20. The adjudication is erroneous in holding that the proper exercise of the aforesaid Federal right against self-incrimination is a breach of the civic responsibility of a professional employee of a School District and that any breach of civic responsibility is a ground of dismissal under the school laws of the Commonwealth. Such holding violates the State and Federal Due Process provisions referred to above as well as the aforementioned Supremacy clause of the Federal Constitution.

21. The adjudication is erroneous in holding that without specific statutory authority for dismissal of a professional employee because of his exercise of rights under the Fifth Amendment in a federal proceeding, such a dismissal may be effected consistently with the aforementioned State and Federal Constitutional provisions.

22. The adjudication is erroneous in holding that the evidence in this record supports the findings and conclusions of the Board of Public Education of the School District of Philadelphia.

Respectfully submitted,

/s/ J. R. C.,
/s/ JOHN ROGERS CARROLL,
Attorney for Appellant.

OPINION OF COURT OF COMMON PLEAS.

Before Bok, *P. J.*, and Flood and Levinthal, *JJ.*

The Board of Education of the School District of Philadelphia dismissed Herman A. Beilan, a High School teacher of English, on the alleged grounds of "incompetency" and of "persistent and wilful violation of the school laws". He appealed to the Superintendent of Public Instruction of the Commonwealth, who affirmed the dismissal. He now appeals to this court, under the School Code: Act of March 10, 1949, P. L. 30, Art. XI, Sec. 1132, as amended: 24 P. S. Sec. 11-1132.

Appellant, who had been a public school teacher since 1930, was asked to report for an interview with Dr. Louis P. Hoyer, Superintendent of Schools, on June 25, 1952. Dr. Hoyer asked appellant whether he had been in 1944 the press director of the professional section of the Communist Political Association. Appellant, without answering, said that he wished to consult counsel, and Dr. Hoyer agreed. In a second interview on October 14, 1952, Dr. Hoyer asked appellant if he was ready to discuss the information in Dr. Hoyer's possession. Appellant replied that after consulting counsel his position was that he could not legally be asked questions about his political or religious beliefs. The interview ended by Dr. Hoyer saying that it was a serious matter, and that failure to answer might lead to appellant's dismissal.

No action was taken by the Superintendent of Schools for thirteen months after the second interview. On November 18, 1953, appellant was subpoenaed to appear before the Committee on Un-American Activities of the House of Representatives, then meeting in Philadelphia. He appeared and testified

as to his educational and employment background. When asked by the Congressional Committee whether he had been associated with organizations connected with the Communist Party, between 1943 and 1949, Mr. Beilan pleaded the privilege of the Fifth Amendment of the Constitution. He refused to answer all questions concerning past associations with Communist activities, and he was excused by the Committee.

Soon after the close of the Committee hearings, Dr. Hoyer suspended Mr. Beilan and preferred formal charges of incompetency and of wilful and persistent violation of the school laws. A hearing followed at which the only evidence presented against appellant related to his refusal to answer Dr. Hoyer's question as to his past political activity and also the record of his testimony before the Congressional Committee.

The Board of Education, by resolution approved by a two-thirds vote of all its members, and opposed by Mr. Saul, its president for many years, dismissed appellant on the grounds charged against him. It is contended by appellant that his removal was improper and illegal, and that the action of the Superintendent of Public Instruction in affirming the dismissal should be reversed.

Although we do not condone appellant's misguided secretiveness and lack of candor, we are convinced that the record in this case discloses basic error on the part of the school authorities in their conception of the scope, and in their interpretation of the provisions, of the Teachers' Tenure Act, under which they purported to act.

At the outset, it should be emphasized that the legislature unquestionably has the power to authorize the removal of school teachers because of subversive activities or associations. The Commonwealth's un-

compromising position with regard to the employment of teachers who are Communists or who advocate or participate in subversive doctrines is well known and universally approved. Mr. Chief Justice Stern, speaking for the Supreme Court, in the case of *Albert Appeal*, 372 Pa. 13 (1952), cogently declared, at p. 19:

> ". . . In short, it is essential, in order to protect our children from treacherous influences, that persons who advocate or participate in subversive doctrines should not be employed, or if employed should not be retained, as teachers in our public schools, and any teacher dismissed *for such a reason* cannot properly claim that any constitutional or legal right is thereby violated." (Emphasis supplied.)

Appellant was not dismissed on the ground that he advocates or participates in subversive doctrines. His contract of employment was terminated on the alleged grounds of incompetency as a teacher and of wilful and persistent violation of the school laws.

An examination of the record makes it abundantly clear that the proceedings before the Board of Education were actually concerned solely with the question of appellant's suspected disloyalty. Such conclusion results from a consideration of these facts: The sole question asked by the Superintendent of Schools at the initial interview in 1952 concerned appellant's alleged affiliation in 1944 with the Communist Political Association, a group now deemed subversive. Furthermore, the entire transcript of appellant's testimony before the Un-American Activities Committee, a Congressional Committee charged with investigating subversive activities, was admitted into the record of the hearing before the Board of Education for consideration by that body. Lastly, the Congressional Committee hearing occurred against a background of

a nation-wide effort to expel all subversives from positions of public service.

It is upon the Teachers' Tenure Act that the Board of Education relies for its authority to dismiss appellant. It should be noted, as the late Chief Justice Kephart pointed out, that the Tenure Act places "emphatic limitations" on the removal of teachers, and that its purpose is "to preserve the system of employment in the educational field free from any interference." *Teachers' Tenure Act Cases*, 329 Pa. 213, at p. 222 (1938).

Prior to 1949, the Tenure Act enumerated the following seven grounds for terminating a teacher's contract of employment: "immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, and persistent and wilful violation of the school laws of this Commonwealth." Act of May 18, 1911, P. L. 309, Sec. 1205, as last amended by Act of June 20, 1939, P. L. 482, Sec. 2. In 1949 the Tenure Act was amended to include as an additional cause for dismissal "advocation of or participating in un-American or subversive doctrines." Act of March 10, 1949, P. L. 30, Sec. 1122. The passage of this amendment leads to the natural inference that prior thereto advocacy of or participating in un-American or subversive doctrines had not been covered by the Tenure Act. It is to be remembered that the case of *Albert Appeal*, supra, in which the dismissal of a subversive teacher was affirmed, was decided on the basis of the Tenure Act as thus amended, and that the Supreme Court expressly declared, at p. 18, that "the legislature can certainly prescribe qualifications for teachers in the public schools with respect not only to their academic attainments but also to their moral character and their loyalty to the state and federal governments."

In 1951 the legislature passed the Pennsylvania Loyalty Act, sometimes called the Pechan Act, which provides for the removal of subversives in all areas of public service. Act of December 22, 1951, P. L. 1726: 65 PS. Sec. 211. The constitutionality of the Loyalty Act was unequivocally upheld. Fitzgerald vs. City of Philadelphia, 376 Pa. 379 (1954). That statute prescribes the procedure whereby a teacher or other public servant may be dismissed if he is proved to be a subversive person. It is significant that by Section 16 of the Loyalty Act the 1949 amendment of the Teachers' Tenure Act, which added "advocation of or participating in un-American or subversive doctrines" as an eighth ground for dismissal, was specifically repealed.

By its passage of the Loyalty Act in 1951, and the repeal of the 1949 amendment of the Tenure Act, it is manifest that the legislature intended to deal with the matter of loyalty solely by the method of procedure provided in the Loyalty Act. This inference rests on common sense as well as on a well-established doctrine enunciated in an early statute of our Commonwealth, that where a remedy or method of procedure is provided by act of assembly, its provisions shall be strictly pursued and exclusively applied. Act of March 21, 1806, P. L. 538, 4 Sm. L. 326 Sec. 13; 45 PS. 158. See *Bartron vs. Northampton County*, 342 Pa. 163, 168 (1941); *Lewisburg Bridge Co. vs. Union County*, 232 Pa. 255, 264 (1911).

The Loyalty Act was passed after much debate in a climate of aroused public reaction to the alleged widespread employment of subversives in the teaching field and other public services. It contains a method of procedure which is intended to care effectively for the interests of all parties involved. The hearing before the Board of Education did not follow

the procedure outlined in the Loyalty Act, and the Board of Education explicitly declared that it was not proceeding under the Loyalty Act, but solely under the Tenure Act. Although the matter considered by the Board of Education bore only on the question of appellant's suspected disloyalty, the testimony presented at the hearing related merely to appellant's refusal to answer questions, and no attempt was made to prove that appellant was actually a Communist or otherwise disloyal. The Board made no finding that appellant was a subversive person, as it is required to do by Section 217 of the Loyalty Act, which reads as follows: ". . . If, after due hearing, it is determined by the appointing authority by a fair preponderance of the evidence that the person who has been so notified is a subversive person, as defined in the act, the person who has been so notified shall be discharged."

We are aware that "incompetency", as used in the Tenure Act, has a common and approved usage which embraces more than merely educational qualifications. *Horosko vs. Mt. Pleasant Township School District et al.*, 335 Pa. 369 (1939); Brown's Case, 151 Pa. Superior 522 (1943). However, it cannot seriously be argued, in the light of the legislative history herein reviewed, that the term "incompetency" includes an alleged disability based on a refusal to answer the Superintendent's query relating to a political association alleged to have occurred eight years prior to the interview. Appellant's refusal to answer that question was obviously not relevant to the issue of his present competency as a teacher. Had Dr. Hoyer seriously regarded appellant as incompetent because of his refusal to answer, he certainly would not have permitted seventeen months to elapse before suspending appellant. Undoubtedly it was appellant's appear-

ance before the Congressional Committee and his claim of privilege under the Fifth Amendment that precipitated the suspension and subsequent dismissal.

It is urged on behalf of appellee that a refusal by a teacher to answer questions *of any character* which the Superintendent of Schools may consider pertinent as affecting his teaching should warrant dismissal under the Teachers' Tenure Act. This broad position would undermine the essential purpose for which the Tenure Act was adopted, and would deprive teachers of any semblance of security in their employment.

As for the second charge of "willful and persistent violation of the school laws", we are unable to find any school law or regulation of the Board of Education which appellant has violated by his refusal to answer the question of the Superintendent or to testify before the Committee, nor has any such law or rule been suggested to us.

The legislature has by means of the Tenure Act and the Loyalty Act, respectively, designated the grounds for dismissal of a teacher. We do not intimate that the legislature lacks authority to enlarge and expand the causes for dismissal. It might, of course, have provided for the discharge of a teacher who refuses to answer questions relating to his associations with subversive political bodies. Indeed, in New York, where such prior legislation had been enacted, through a provision in the City Charter, a teacher's dismissal has been upheld. *Daniman vs. Board of Education of the City of New York*, 306 N. Y. 532, 119 N. E. 2d 373 (1954). The legislature of Pennsylvania, however, has not enacted such a statute, and it is of some significance that Senate Bill No. 94 of the 1953 Session and Senate Bill No. 22 of the 1955 Session, both of which were introduced by Senator Pechan,

the author of the Loyalty Act of 1951, and which provided for the removal of public servants who refuse to testify on constitutional grounds, have not been adopted.

Nor do we hold that the Board of Education may not properly promulgate a rule making it the duty of teachers to cooperate with proper investigatory bodies by answering all questions put to them as to their loyalty and declaring that teachers who violate such rule may be dismissed. In California, where such a regulation had been promulgated by the Board of Education, dismissal for its subsequent violation has also been upheld. *Board of Education of Los Angeles vs. Gerber*, Cal. Super. Ct. Dec. 2, 1953, 22 U. S. Law Week, 2286.

In the Massachusetts case of *Faxon vs. School Committee of Boston*, 331 Mass. 531, 120 N. E. 2d 772 (1954), the dismissal of a teacher "at discretion" was upheld for failure to testify before a United States Senate Committee as to his loyalty. It is to be noted that the Massachusetts statute provides that a teacher "at discretion" may be dismissed for "conduct unbecoming a teacher . . . or other good cause." Unlike our Tenure Act, the Massachusetts Act conferred upon the school authorities the power of removal of such teachers "in the most general terms", a power which may "be exercised whenever in the judgment of those to whom it is committed the public good for any cause requires it." See *Sheldon vs. Hopedale*, 276 Mass. 230, 177 N. E. 94 (1931), citing *Knowles vs. Boston*, 78 Mass. (12 Gray) 339.

No decision has been cited, nor have we been able to discover any case, where under a Tenure Act similar to ours a teacher's dismissal for refusal to answer questions as to his prior political associations has been judicially upheld. For us, as judges, under